SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1896.

No. 584.

THE UNITED STATES, APPELLANT,

vs.

RANLETT & STONE.

ON A CERTIFICATE FROM THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIFTH CIRCUIT.

INDEX.

	Original.	Print.
Caption	1	1
Certificate of the judges	1	1
Statement of facts	2	1
Protest	2	1
Decree of circuit court	5	3
Questions certified	6	4
Clerk's certificate	7	4

1 United States of America, fifth judicial circuit.

Be it remembered that on this 2nd day of June, 1896, the same being a day of the November term of 1895 of the United States circuit court of appeals for the fifth circuit, begun and held in the city of New Orleans, State of Louisiana, there being present the Hon. Don A. Pardee and the Hon. A. P. McCormick, United States circuit judges for the fifth judicial circuit, and the Hon. Emory Speer, United States district judge for the southern district of Georgia, when the following proceedings were had:

United States circuit court of appeals. Fifth circuit. November term, 1895. Filed June 2, 1896.

THE BOARD OF UNITED STATES GENERAL APPRAISERS, appellants, *v.* RANLETT & STONE, APPELLEES. } No. 462.

Appeal from the circuit court of the United States, eastern district of Louisiana.

Before Pardee and McCormick, circuit judges, and Speer, district judge.

2 This cause came on to be heard on the transcript of appeal and was argued, whereupon the court finds the following facts:

In the latter part of 1893 and in January, 1894, the appellees, Ranlett & Stone, as owners, imported from Liverpool, England, into the United States, through the port of New Orleans, large quantities of grain bags made of jute, commonly known as cental bags. These bags were purchased under a guarantee that they were bags of American manufacture, shipped from the United States, filled with the products thereof, and entitled to free entry on their return to the United States. On the arrival of the goods free entry was made of each importation and evidence furnished with regard to the right of free entry and the character of the goods, as required by the customs regulations, Nos. 331, 336, incl.

From the examination made of samples sent to the appraiser's office a report was made as to each importation that the bales imported contained bags of foreign manufacture which were subject to duty, and thereupon the collector of the port of New Orleans, under authority from the Secretary of the Treasury, made an impost entry assessing a duty of two cents per pound on the entire consignment. The duties were paid under protests, of which the following is a sample:

NEW ORLEANS, *December 30th, 1893.*

HON. THEO. S. WILKINSON,
Collector of Customs, New Orleans, La.

SIR: We hereby protest against your decision, liquidation, and rate and amount of duties assessed by you at two (2) cents per pound on our importation of returned empty American grain bags per "Legislator"

/SS/ entered September 7th, 1893. Impost entry N 6400, dated September 30th, 1893, to which is attached free entry No. 6093, dated September 12th, 1893, liquidated December 21st, 1893, marked:

3 United States

	1– 125	125 bales.
H C	926–1225	300 "
	1226–1350	125 "
K	1351–1450	100 "

650 bales, each containing 1,000 bags, equals 650,000 bags, on the following grounds:

We claim that said bags are entitled to free entry under the provisions of paragraph 493 of the free list of the act of October 1st, 1890, as bags of American manufacture exported filled with American products and not dutiable as assessed by you.

We claim that if not free of duty as above set forth the bags are entitled to free entry under the provisions of sec. 7 of the act of February 8th, 1875, which provides that bags other than of American manufacture in which grain shall have been actually exported from the United States may be returned empty to the United States free of duty, and that same are not dutiable as assessed.

We claim that the act of February 8th, 1875, is still in full force and effect and has not been repealed by any statute of the United States, and that the regulations for the free entry of bags other than of American manufacture, prescribed by the Secretary of the Treasury, are still in force, and that we have complied with said regulations in all respects.

We claim that the goods were not fairly and faithfully examined by the appraisers, and that the assessment of two (2) cents per pound on the entire contents of the packages on the ground that they were found, in the opinion of the appraiser, to contain a mixture of foreign with American bags in incorrect, and the goods being all of one value, whether of foreign or American make, do not come under the provisions of sec. 2910 of the Revised Statutes.

We claim refund of the duties illegally exacted.

Very respectfully,
(Signed) RANLETT & STONE.

From the decision of the collector an appeal was taken to the Board of General Appraisers. Upon the appeal evidence was taken showing the facts so far recited, and in addition as follows: That of the entry, ex SS "Engineer," of 600 bales, 70 were ordered to the appraiser's store, and 18 of that number were opened by the appraiser; ex SS "Legislator," 650 bales, 43 were ordered to the appraiser's store, and of that number 19 were opened by the appraiser; ex SS "Vesta" of 325 bales, 38 were ordered to the appraiser's store, 13 of which were opened by the appraiser; ex
4 SS "Assaye" of 850 bales, 85 were ordered to the appraiser's store, 16 of which were opened by the appraiser; ex SS "Traveller" of 300 bales, 21 were ordered to the appraiser's store, 14 of which were opened by the appraiser; ex SS "Pallas" of 100 bales, 100 were ordered to the appraiser's store, of which 10 were opened by the appraiser; and ex SS

"Engineer" of 100 bales, 100 were ordered to the appraiser's store, of which 10 were opened by the appraiser; that neither the appraiser nor examiner who assisted in the examination of the bales opened at the appraiser's store had any experience or knowledge of the matter in hand sufficient to be able to say with certainty of any one bag that it was of foreign or of American manufacture. The other witnesses called appeared to be no better informed. An examination of the whole evidence shows that neither by the material, cotton selvedge, the thread used, nor stitch—and these were all the marks referred to—could anyone certainly tell a foreign-made bag from an American-made bag. In the judgment of the examiner and of two or three of the witnesses, based upon what knowledge and experience they had, all the bales examined contained both bags of foreign manufacture and bags of American manufacture. In the opinion of the examiner it was sufficient to find any foreign bags in any bale in order to make the whole bale liable for duty—a bale being in the opinion of the examiner a unit.

The Board of General Appraisers, in an opinion rendered (Synopsis of Decisions, 15070; G. A., 2623), held that the burden of proof was on the appellants to show that the goods were bags of American manufacture within the meaning of paragraph 493, tariff act of 1890; that if bags chargeable with duty and bags of American manufacture entitled to be entered free of duty were contained in the same package it was the duty of the importer to separate and designate such merchandise and accompany the same with the evidence required by law, otherwise the unit rule would prevail and the whole package be charged as dutiable; that the provisions of the acts of February 8, 1875, and of March 3, 1883, under which alternative claims were made, are no longer in force; and that the decisions of the collector of the port of New Orleans were correct.

From this decision of the Board Ranlett & Stone appealed to the circuit court of the United States for the eastern district of Louisiana, and on a petition and exhibits giving a full statement of their complaints obtained an order that the Board of General Appraisers should return to that court the record and evidence taken before them as to the matter involved, together with a certified statement of facts in the case and their decision thereon.

A return showing the proceedings before the Board of General Appraisershaving been made in pursuance of the order of the circuit court, the case was heard before the circuit court without additional evidence.

On the hearing, the circuit court adjudged and decreed on the merits of the case as follows:

"That the duties paid by the importers, Ranlett & Stone, on the 2,925,000 bags imported by them in the years 1893 and 1894 and referred to in the decision of the Board of General Appraisers rendered 21st May, 1894, and enumerated in the documents annexed to that decision be refunded and paid to petitioners, Ranlett & Stone, to wit: Two cents per pound on 600 bales of empty grain bags entered per 'Engineer' August 14, 1893; 650 bales of same entered Sept. 7, 1893, per 'Legislator;' 325 bales of same per 'Vesta,' entered October 19, 1893; 850 bales of same entered November 8, 1893, per 'Assaye;' 300 bales of same entered December 6, 1893, per 'Traveller;' 100 bales of same entered Jan. 4,

1894, per 'Pallas,' and 100 bales of same entered Jan. 15, 1894, per 'Engineer,' and the court doth declare that the examination heretofore made of said bales of bags is void and not in conformity to law or the regulations of the Treasury Department, and any liquidation of
6 duties based on said examination is illegal and void, and the liquidation of duties heretofore made be set aside, and the money received from Ranlett & Stone as duties be refunded as aforesaid, and the court doth further order and decree that the collector direct a re-examination to reliquidate the duties which may be lawfully due thereon."

From this decree the Attorney-General, on behalf of the United States, appealed to this court, assigning as errors two rulings of the circuit court, to which bills of exception were reserved, and generally that the decree is erroneous.

Whereupon, the court desiring the instruction of the honorable Supreme Court for the proper decision of this appeal, the following questions and propositions of law arising therein, to wit:

1st. Whether the returns of the appraiser that the several importations of Ranlett & Stone contained bags of foreign manufacture based on an examination not in conformity with law or the regulations of the Treasury Department had the effect of overthrowing the prima facie case made by the importers who were without fraud in the premises and who had furnished all the proofs required by the customs regulations, to show that their importations were of bags free of duty?

2d. Whether the presence of some bags of foreign manufacture in a bale imported as composed of American-made bags free of duty subjects to duty all the bags in the bale by virtue of the unit rule established by section 2910 of the Revised Statutes or by the general rules of law applicable to the case?

3d. Whether the presence of foreign-made bags in a bale imported as composed of American-made bags, the foreign made bags being indiscriminately mixed in the bale with the American-made bags without the knowledge of the importer and with no intention on his part or on the part of the vendor and shipper to conceal the dutiable bags by mingling them with others free of duty, subjects the whole bale to duty,
7 because the importer who has complied with all the regulations prescribed by the Secretary of the Treasury as to the character of his importation fails to separate and designate the American-made bags, which he claims to be free of duty, and although the importer requests the customs officers to make such separation and to endorse on the invoices returned by them the percentage of American-made and foreign-made bags in each bale, which request is refused by the officers on the ground that they could not and would not make such separation because it necessitated the going through the bales bag by bag to ascertain the percentage?

It is ordered that the above questions be certified to the honorable Supreme Court of the United States, and that the clerk transmit with this certificate a copy of the transcript of appeal and of the briefs filed.

I, J. M. McKee, clerk of the United States circuit court of appeals for the fifth circuit, do hereby certify that the above and foregoing 7 pages constitute a full and perfect transcript of the questions ordered by said court to be certified to the Supreme Court of the United States in

the cause of The Board of United States General Appraisers v. Ranlett & Stone, No. 462, as fully and completely as the same remains of record in my office.

Given under my hand and seal of said United States circuit court of appeals, at the city of New Orleans, this 17 day of July, A. D. 1896.

[SEAL.] J. M. McKEE,

Clerk of the United States Circuit Court of Appeals for the Fifth Circuit.

(Indorsement on cover:) Case No. 16363. Term No. 584. The United States, appellant, vs. Ranlett & Stone. U. S. circuit court of appeals, 5th circuit. Filed August 13th, 1896.

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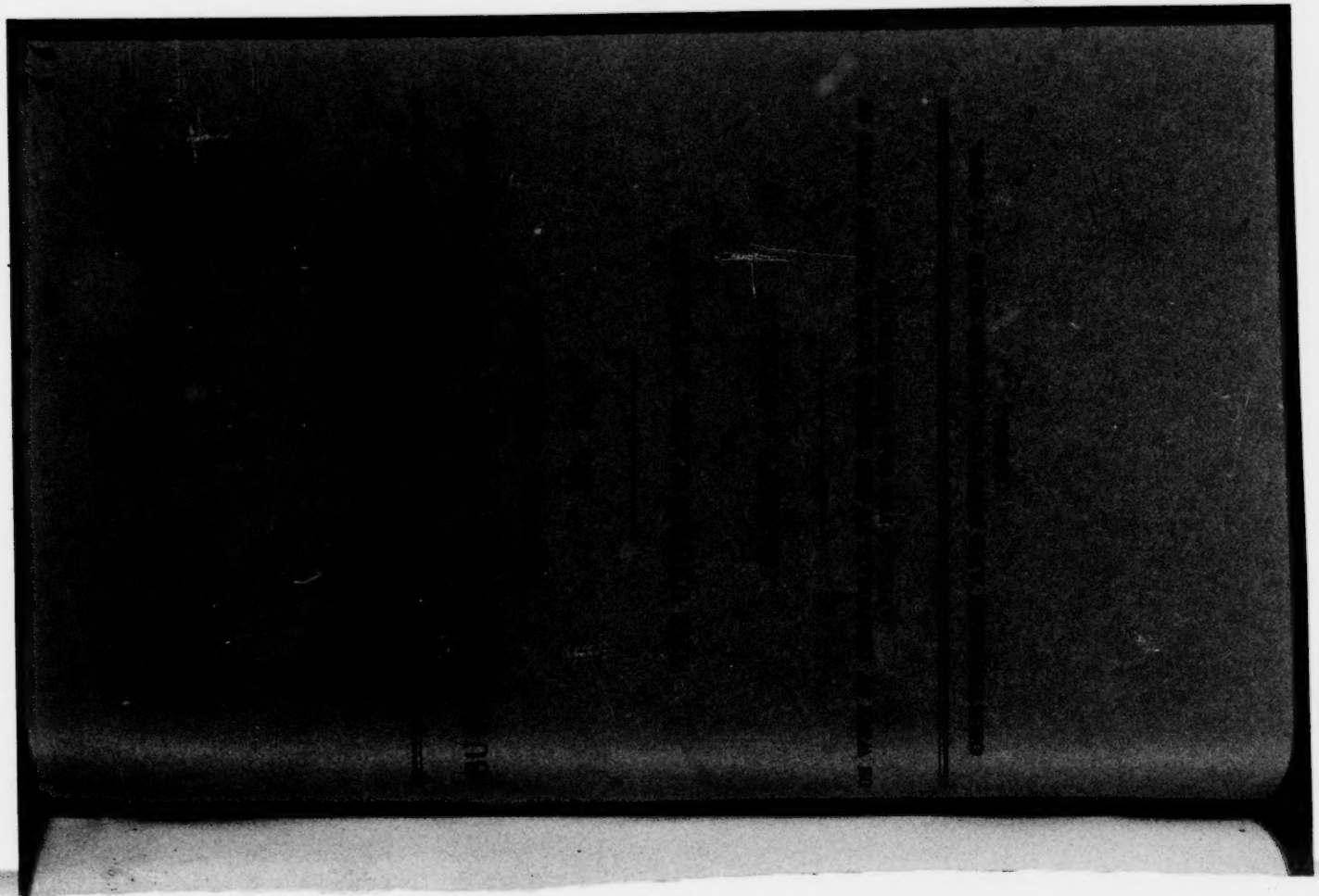


SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1898.

No. 20.

THE UNITED STATES, APPELLANT,

vs.

RANLETT & STONE.

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIFTH CIRCUIT.

22331

UNITED STATES OF AMERICA.

CIRCUIT COURT OF THE UNITED STATES, EASTERN DISTRICT OF LOUISIANA, NEW ORLEANS DIVISION.

IN THE MATTER OF RANLETT & STONE, Appellee,
vs.
THE BOARD OF UNITED STATES GENERAL Appraisers, Appellant.
} No. 12,313.

THOMAS J. SEMMES, Esq., for RANLETT & STONE, Appellee.
FERDINAND B. EARHART, Esq., U. S. District Attorney, for Appellant.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE FIFTH CIRCUIT AND EASTERN DISTRICT OF LOUISIANA, NEW ORLEANS DIVISION, TO THE CIRCUIT COURT OF APPEALS OF THE UNITED STATES FOR THE FIFTH CIRCUIT, RETURNABLE WITHIN THIRTY (30) DAYS FROM THE TWENTY-EIGHTH (28TH) DAY OF DECEMBER, A. D. 1895, AT THE CITY OF NEW ORLEANS, LA.

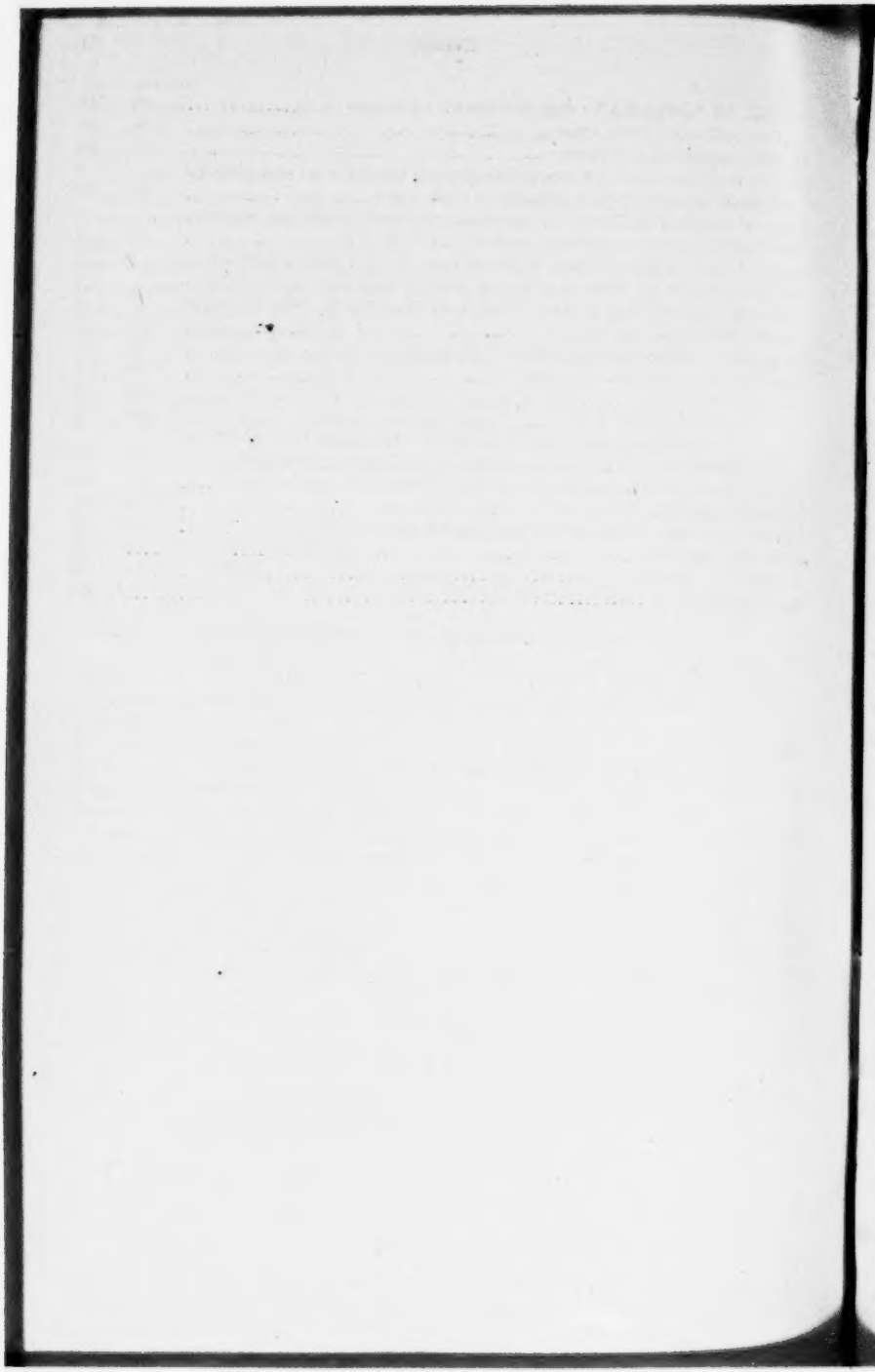
TRANSCRIPT OF APPEAL.

INDEX.

	Original.	Print.
Application for revision of decision of Board under Act June 10, '90, Ch. 407, Section 15	1	1
Order on application	6	3
Marshal's return	6	4
Marshal's return	7	4
Schedule A, annexed to petition	7	4
Copy of letter to collector, Oct. 10, '93, and of protest, Dec. 23, 1893, filed with petition	8	4
Copy of letter to collector, Sept. 30, '93, and of protest, Dec. 30, 1893	10	6
Copy of letter to collector, Oct. 31, '93, and of protest, Dec. 30, 1893	13	8
Copy of letter to collector, Nov. 8, '93, and of protest, Jan. 4, 1894, filed with petition	16	9
Copy of protest dated Jan. 15, '94, filed with petition	19	11
Copy of protest of Jan. 27, '94, filed with petition	21	12
Copy of protest of Jan. 30, '94, filed with petition	23	13

	Original.	Print.
Communication of Raulett & Stone to Geo. C. Tichenor, President of Board of General Appraisers, April 9, 1894, stating grounds for reversing decision of collector, filed with petition	24	14
Examination of witnesses before General Appraiser J. B. Wilkinson at Customhouse in New Orleans on the 27th of March, 1894, was filed with petition, etc	27	15
Answer	27	15
Motion to rescind order and dismiss application for review	28	16
Hearing and submission of motion to rescind, etc	29	16
Order on motion to dismiss application	30	16
Motion of applicants to amend their petition and to strike out certain words in reference to making testimony annexed to petition a part thereof	31	17
Bill of exceptions No. 1	31	17
Return of the Board of U. S. General Appraisers	32	18
EVIDENCE CONTAINED IN RETURN OF BOARD.		
Exhibit "A."	35	19
Exhibit "C."—Protest (original)	37	20
Exhibit "D."—Protest (original)	37	20
Exhibit "E."—Protest (original)	37	21
Exhibit "K."—Letter of January 4, 1894, from Charles F. Alba to Wilkinson, Collector	38	21
Exhibit "L."—Letter of Charles F. Alba, Appraiser, to Wilkinson, Collector, dated January 4, 1894	39	21
Exhibit "B."—Letter to George C. Tichenor, president Board of General Appraisers, from Calhoun Fluker, Special Deputy Collector, January 18, 1894	39	21
Exhibit "F.—Protest (original)	42	23
Exhibit "M."—Letter from C. F. Alba, Appraiser, to T. S. Wilkinson, Collector, dated January 16, 1894	42	23
Report of C. W. Keeting, Examiner, to C. F. Alba, Appraiser, dated January 13, 1894, attached to foregoing letter	43	23
Exhibit "G."—Copy of letter to president of Board of Appraisers from special deputy collector, dated February 16, 1894	44	24
Exhibit "H."—Protest (original)	46	25
Exhibit "I."—Protest (original)	46	25
Exhibit "J."—Protest (original)	47	25
Exhibit "N."—Letter to collector from appraiser, dated January 23, 1894	47	26
Exhibit "O."—Letter to collector from appraiser, dated February 2, 1894	48	26
Exhibit "P."—Letter to collector from appraiser, dated February 16, 1894	49	26
Exhibit "Q."—Containing testimony of Henry Charnock	49	27
Charles W. Keeting, Examiner of Customs	52	28
Charles W. Keeting	54	29
David Glover	64	35
Leonard Naef	66	36
C. F. Alba	70	37
J. W. Stone	71	38
A. S. Raulett	73	39
Exhibit "R."—Opinion by Sharpe, General Appraiser	76	41
Exhibit "S."—Opinion by Sharpe, General Appraiser	81	44

	Original.	Print.
Exhibit "T."—Opinion by Sharpe, General Appraiser	86	46
Motion and order fixing cause	90	48
Order—Continuance of cause	90	49
Motion to strike out and disregard so much of the evidence and decision of Board of Appraisers applicable to other cases	90	49
Copy of decision of Board of Appraisers, annexed to motion to strike out certain parts thereof indicated by brackets in ink	92	49
Copy of oral testimony filed with petition, June 1, 1894, described as "Examination of Witnesses before General Appraiser J. B. Wilkinson, at Customhouse in New Orleans, on 27th March, 1894," referred to in motion to suppress, etc	97	52
Hearing and submission of motion to suppress	97	52
Hearing and submission of cause	98	53
Decree Unsigned	98	53
Bill of Exceptions No. 2	100	54
Motion to strike out, etc., filed January 21, 1895, made part of Bill of Exceptions No. 2	101	55
Decree on motion to suppress, made part of bill of exceptions No. 2	101	55
Decree—signed	102	55
Motion and order of appeal and assignment of errors	104	56
Citation of appeal		58
Proof of service		58
Clerk's certificate		58



Application for Revision of Decision of the Board Under Act June 10, 1890, Ch. 407, Section 15.

Filed June 1, 1894.

United States Circuit Court, Eastern Dist. of Louisiana.

IN RE RANLETT & STONE,
vs.
U. S. BOARD OF GENERAL APPRAISERS.

To the Honorable the Circuit Court of the United States of the Eastern District of Louisiana, sitting in New Orleans:

The petition and application of Albert S. Ranlett and Joseph W. Stone, merchants and doing business in New Orleans under the firm name of Ranlett & Stone respectfully represents that in the year 1893 and in January, 1894, they purchased abroad and imported as owners into the port of New Orleans from Liverpool a large quantity of Grain Bags made of Jute and commonly known as Cental Bags of American manufacture shipped from the United States filled with the products thereof, and entitled to free entry on their return to this country; and in the contracts of purchase made by your petitioners with the vendors they guaranteed that said bags were entitled to free entry into the ports of the United States.

The said importations were as follows:

By the | ss | "Engineer," 600 bales containing 600,000 bags entered on the 14th of August, 1893, and free entry was made of this cargo No. 5878 dated September 1st, 1893, and afterwards in consequence of a controversy with the Collector of the Port of New Orleans arising as to the right of free entry, an Impost entry was made by the authority of the Secretary of the Treasury No. 6675 on October 10th, 1893, and duties were paid under protest; this entry liquidated on 15th December, 1893, and the protest or written notice of objections to the decision of the Collector of this port as required by Section 14 of the Act of Congress approved June 10th, 1890, Chapter No. 407, was filed with the Collector on December 23d, 1893, a copy of which is hereto annexed as part hereof.

A similar course was pursued as to 650 bales containing 650,000 bags imported by the | ss | "Legislator" entered September 9th, 1893. The Free Entry No. 6093 was dated September 30th, 1893, and duties were paid under protest and the entry liquidated December 21st, 1893, and the protest or written notice of objections was filed with the collector on December 30th, 1893, a copy of which is hereto annexed as part hereof.

A similar course was pursued in regard to the importation of 325 bales containing 325,000 bags by the | ss | "Vesta" entered October 9th, 1893, and Free Entry No. 6682 is dated October 10th, 1893, and Impost Entry No. 6959 is dated 31st October, 1893, and the duties were paid under protest and the entry was liquidated December 22nd, 1893, and the protest or written notice of objection was filed with the collector December 30th, 1893, a copy of which is hereto annexed as part hereof.

A similar course was pursued in regard to the importation of 300 bales containing 300,000 bags by the | ss | "Traveller" entered December 26th, 1893, and Free Entry No. 8168 is dated December 28th, 1893, but the collector of the port of New Orleans claimed that said bags were not entitled to free entry, and thereupon, on January 6th, 1894, the entry was liquidated and duties paid under protest, and the protest or written notice of objections was filed with the Collector on 15th January, 1894, a copy of which is hereto annexed as part hereof.

A similar course was pursued in regard to the importation of 100 bales containing 100,000 bags per | ss | "Pallas" entered January 4th, 1894, the Free Entry No. 103 is dated January 5th, 1894. But, the Collector of the Port of New Orleans claimed that said bags were subject to duty, and the entry was liquidated and duties paid under protest on January 19th, 1894, and the protest or written notice of objections was filed with the Collector, January 27th, 1894, a copy of which is hereto annexed as part hereof.

A similar course pursued in regard to the importation of 100 bales containing 100,000 bags by the | ss | "Engineer" entered January 15th, 1894, and Free Entry No. 339 is dated January 17th, 1894. But, the Collector of the Port of New Orleans claimed that the said bags were subject to duty and the duties were paid under protest and the entry liquidated 25th January, 1894, and the protest or written notice of objection was filed with the Collector January 30th, 1894, a copy of which is hereto annexed as part hereof.

A similar course was pursued in regard to the importation of 850 bales containing 850,000 bags by the | ss | "Assaye" entered November 8th, 1893. In this case the free entry was refused by the Collector of the Port of New Orleans and under the authority of the Secretary of the Treasury an Impost Entry No. 7262 was made on November 11th, 1893, and the duties were paid under protest and the entry liquidated December 27th, 1893, and the protest or written notice of objections was filed with the Collector January 4th, 1894, a copy of which is hereto annexed as part hereof.

Your petitioners aver that no proper or legal examination was made at the Port of New Orleans of the bags imported by the | ss | s "Engineer," "Legislator," "Vesta," "Assaye," or "Traveller." The part of the bags taken from each shipment and ordered to the Appraisers' Store and the part of the bags opened by the Appraiser for examination is stated in a schedule hereto annexed as part hereof, marked "A."

Your petitioners aver that the various protests or written notices of objections hereinbefore mentioned were served on Theo. S. Wilkinson, Collector of the Port of New Orleans on the dates that they respectively bear date, and within ten days after the respective dates of the liquidations hereinbefore mentioned.

Your petitioners represent that Theo. S. Wilkinson, the Collector of the Port of New Orleans, having decided that all the bags aforesaid were subject to duty and your petitioners having paid duties under protests as aforesaid and having filed with the Collector of the Port of New Orleans as required by Section 14 of the Act of Congress approved 10th June, 1890, Chapter No. 407 within the time prescribed by law, the written objections aforesaid to the decision of the said Collector, they took an

appeal from said decision to the Board of General Appraisers at New York, which Board sent one of their members to New Orleans to take testimony as to the facts of the case involved in said appeal. Said testimony was taken in the City of New Orleans on the 27th March, 1894, a copy of which is hereto annexed as part hereof. And thereupon, your petitioners transmitted to the General Board of Appraisers at New York a communication addressed to George C. Tichenor, the President of the said Board dated April 9th, 1894, which set forth the grounds upon which they rested their appeal, a copy of which is hereto annexed as part hereof. And, your petitioners aver that upon said grounds so set forth they are entitled to a Free Entry of said bags.

Your petitioners aver that the said Board of General Appraisers at New York, on 21st May, 1894, decided adversely to the appeal of your petitioners and sustained the decision of the Collector of the port of New Orleans.

Wherefore, your petitioners file this their application to this court, pursuant to the provisions of Section 15 of the Act of Congress approved June 10th, 1890, Chapter 407, for the purpose of having this court review the decision aforesaid of the Board of General Appraisers and reverse the same, and order the Collector of the Port of New Orleans to reliquidate said entries, and class said bags imported as aforesaid as entitled to entry free of duty, for the reasons and on the grounds aforesaid set forth in said protests or written notices of objections, and to order the Collector of the Port of New Orleans to refund all duties aforesaid heretofore paid under protests by your petitioners on the aforesaid importations of bags, with all expenses incurred by your petitioners, and for that purpose pray that a copy of this application be served on Theo. S. Wilkinson, Collector of the Port of New Orleans, as required by Section 15th of the said Act of 1890, and also that the court make an order directing the said Board of General Appraisers to return to this court the record and the evidence taken before them as to the matter involved in this application, together with a certified statement of the facts in the case and their decision thereon. And after due consideration of the law and the facts that this court will reverse said decision of the Board of General Appraisers and grant the relief herein prayed for.

(Signed) THOS. J. SEMMES,
Att'y for Pet'rs.

(Signed) RANLETT & STONE.

Order.

Let this application be filed and a copy thereof be served on Theodore S. Wilkinson, collector of the port of New Orleans, pursuant to Section 407 of the act of Congress, approved June 10, 1890. And it is ordered by the court that the Board of United States General Appraisers do return to this court the record and the evidence taken before them as to the matter involved in this application, entitled In re Ranlett & Stone vs. United States Board of General Appraisers, together with a certified statement of facts in the case and their decision thereon.

New Orleans, June 1, 1894.

(Signed) CHARLES PARLANGE,
U. S. Judge.

Marshal's Return.

Received by U. S. Marshal, New Orleans, La., June 1, 1894, and on the same day I served copy hereof on Hon. Theo. S. Wilkinson, collector of port of New Orleans, by handing same to him in person at his office in the Custom House.

(Signed) J. V. GUILLOTTE,
U. S. Marshal.
By T. I. GALBRETH, *Dy.*

And on the 10th day of July, 1894, I served a true copy of Application of Ranlett & Stone and Document annexed and order on Hon. Theo. S. Wilkinson, Collector of Port of New Orleans by leaving the same in the hands of Calhoun Fluker, Special Deputy Collector of New Orleans, who informed me that the Hon. Theo. S. Wilkinson, Collector, was absent from the City of New Orleans at the time of said service.

(Signed) J. V. GUILLOTTE,
U. S. Marshal.
By J. E. BOEHLER,
Dy. U. S. Marshal.

Exhibit marked Schedule A annexed to Petition.

Filed June 1, 1894.

Memorandum of number of bales of Central Bags ordered to the appraiser's store of the following shipments and number of bales opened:

		Ordered to Appraiser's Store	Opened by Appraisers	
Engineer	600 bales	70 = 11½% full	18 =	3 %
Legislator	650 "	43 = 6½% -o-	19 = barely	3 %
Vesta	325 "	38 = 11½% -o-	13 =	4 %
Assaye	850 "	85 = 10 % -o-	16 = barely	2 %
Traveller	300 "	21 = 7 %	14 = rather over	4½%
Pallas	100 "	100 = 100 %	10 =	10 %
Engineer	100 "	100 = 100 %	10 =	10 %

Copy of Letter to Collector, October 10, 1893, and of Protest Dec. 23, 1893.

Filed with petition June 1, 1894.

Slip attached to copy of letter and protest:

(Written in red ink)—600 bales = 600,000 bags.
(Written in black ink)
"Engineer" | ss | entered August 14, 1893.
Free entry No. 5878 dated September 1, 1893.
Impost entry 6675 " October 10, 1893.
Entry liquidated December 15, 1893.
Protest filed December 23, 1893.

OCTOBER 10, 1893.

Hon. T. S. WILKINSON,
Collector of Customs, New Orleans.

DEAR SIR—In reference to our impost entry of this date for K.

101—400	300 bales,
401—500	100 "
726—925	200 "

600 bales, returned empty wheat bags, per S. S. "Engineer" entered Aug. 14, 1893, for which free entry was made September 1, 1893, we respectfully request that it be placed on record, that said impost entry is made by authority of the Secretary of the Treasury as per his telegram of the 28th ultimo, in order to enable us to obtain possession of such portion of the shipment, as is not required by the appraisers for examination, and is made without prejudice to the aforesaid free entry, or to the return to us of the duties deposited should the goods not *not* appraised as of foreign manufacture, or to our right to protest and appeal should the goods not be appraised as of American manufacture.

Yours respectfully,
(Signed) RANLETT & STONE.

(Copy.)

NEW ORLEANS, *December 23d, 1893.*

Hon. THEO. S. WILKINSON,
Collector of Customs, New Orleans, La.

SIR—We hereby protest against your decision, liquidation and rate and amount of duties assessed by you at two (2) cents per pound on our importations of returned empty wheat bags per Engineer ss entered August 14th, 1893. Impost entry No. 6675 dated October 10th, 1893, to which is attached free entry 5878 dated Sept. 1st, 1893, liquidated December 15th, 1893, marked:

United States,

K	101–400	300 bales,
	401–500	100 "
	726–925	200 "

600 bales, each containing 1,000 bags, equals 600,000 bags, on the following grounds:

We claim that said bags are entitled to free entry under the provisions of paragraph 493 of the free list of the Act of October 1st, 1890, as bags of American manufacture, exported filled with American products and not dutiable as assessed by you.

We claim that if not free of duty as above set forth the bags are entitled to free entry under the provisions of Sec. 7, of the Act of February 8th, 1875, which provides that bags other than of American manufacture in which grain shall have been actually exported from the United States, may be returned empty to the United States free of duty and that same are not dutiable as assessed.

We claim that the act of February 8th, 1875, is still in full force and effect and has not been repealed by any statute of the United States, and that the regulations for the free entry of bags other than of American manufacture described by the Secretary of the Treasury are still in force and that we have complied with said regulations in all respects.

We claim that the goods were not fairly and faithfully examined by the appraisers, and that the assessment of two (2) cents per pound on the entire contents of the packages on the ground that they were found, in the opinion of the appraiser, to contain a mixture of foreign with American bags, is incorrect, and the goods being all of one value whether of foreign or American make, do not come under the provisions of Sec. 2910 of the Revised Statutes.

We claim refund of the duties illegally exacted.

Very respectfully,
(Signed) RANLETT & STONE.

Copy of Letter to Collector Sept. 30, 1893, and of Protest Dec. 30, 1893.

Filed June 1, 1894.

Slip attached to letter and protest.

(Written in red ink)—
600 bales = 650,000 bags.
(Written in black ink.)
"Legislator" | ss | entered September 17th, 1893.
Free entry No. 6093 dated September 12th, 1893.
Impost entry 6400 dated September 30th, 1893.
Entry liquidated December 21st, 1893.
Protest filed December 30th, 1893.

SEPTEMBER 30th, 1893.

Hon. T. S. WILKINSON,
Collector of Customs, New Orleans.

DEAR SIR—In reference to our impost entry of this date for

K		926–1225	300 bales,
		1226–1350	125 "
		1351–1450	100 "
H	c	1–125	125 "

650 bales returned empty wheat bags per | ss | "Legislator" entered September 7th, 1893, for which free entry was made September 12th, 1893, we respectfully request that it be placed on record that said impost entry is made by authority of the Secretary of the Treasury as per his telegram of the 28th instant, in order to enable us to obtain possession of such portion of the shipment as is not required by the appraisers for examination, and is made without prejudice to the aforesaid free entry, or to the return to us of the duties deposited should the goods *not* be appraised as of foreign manufacture, or to our right to protest and appeal should the goods not be appraised as of American manufacture.

Yours, respectfully,
(Signed) RANLETT & STONE.

(Copy.)

NEW ORLEANS, *December 30th, 1893.*

Hon. THEO. S. WILKINSON,
Collector of Customs, New Orleans, La.

SIR—We hereby protest against your decision, liquidation and rate and amount of duties assessed by you at two (2) cents per pound on our importations of returned empty American grain bags per *Legislator* | ss | entered September 7th, 1893. Impost entry No. 6400 dated September 30th, 1893, to which is attached free entry No. 6093, dated September 12th, 1893, liquidated December 21st, 1893, marked:

United States,

H c	1- 125	125 bales.
	926-1225	300 "
	1226-1350	125 "
K	1351-1450	100 "
		650 bales, each containing,

1,000 bags, equals, 650,000 bags, on the following grounds:

We claim that said bags are entitled to free entry under the provisions of paragraph 493 of the free list of the act of October 1st, 1890, as bags of American manufacture exported filled with American products and not dutiable as assessed by you.

We claim that if not free of duty as above set forth the bags are entitled to free entry under the provisions of Sec. 7, of the act of February 8th, 1875, which provides that bags other than of American manufacture in which grain shall have been actually exported from the United States, may be returned empty to the United States free of duty and that same are not dutiable as assessed.

We claim that the Act of February 8th, 1875, is still in full force and effect and has not been repealed by any Statute of the United States, and that the regulations for the free entry of bags other than of American manufacture prescribed by the Secretary of the Treasury are still in force and that we have complied with said regulations in all respects.

We claim that the goods were not fairly and faithfully examined by the appraisers, and that the assessment of two (2) cents per pound on the entire contents of the packages on the ground that they were found, in the opinion of the appraiser, to contain a mixture of foreign with American bags is incorrect, and the goods being all of one value whether of foreign or American make, do not come under the provisions of Sec. 2910 of the Revised Statutes.

We claim refund of the duties illegally exacted.

Very respectfully,
(Signed) RANLETT & STONE.

Copy of Letter to Collector Wilkinson, Octo. 31, 1893 and of Protest Dec. 30, 1893.

Filed June 1st, 1894, with Petition.

Slip attached to copy of Letter and Protest:

(Written in red ink)—
325 Bales=325,000 Bags.
(Written in black ink)
"Vesta" | ss | entered October 9th, 1893.
Free entry No. 6682 dated October 10th, 1893.
Impost entry 6959 dated October 31st, 1893.
Entry liquidated December 22nd, 1893.
Protest filed December 30th, 1893.

OCTO. 31st; 1893.

Hon. T. S. WILKINSON,
Collector of Customs, New Orleans, La.

DEAR SIR: In reference to our impost entry of this date for

K.	1451–1575	125 bales,
	1576–1775	200 "
		325 bales,

returned empty wheat bags per "Vesta" as entered October 9th, 1893, for which free entry was made October, 1893, we respectfully request that it be placed on record that said impost entry was made by authority of the Secretary of the Treasury as per his telegram of the 30th instant, in order to enable us to obtain possession of such portion of the shipment as is not required by the appraisers for examination and is made without prejudice to the aforesaid free entry or to the return to us of the duties deposited should the goods *not* be appraised as of foreign manufacture or to our right to protest and appeal should the goods not be appraised as of American manufacture.

Yours respectfully,
(Signed) RANLETT & STONE.

(Copy.)

NEW ORLEANS, LA., *December 30th, 1893.*

Hon. THEO. S. WILKINSON,
Collector of Customs, New Orleans, La.

SIR: We hereby protest against your decision, liquidation and rate and amount of duties assessed by you at two (2) cents per pound on our importation of empty returned grain bags per Vesta ss entered October 9th, 1893. Impost entry No. 6959 dated October 31st, 1893, to which is attached free entry No. 6682 dated October 10th, 1893, liquidated December 22nd, 1893, marked:

United States,

K	1451–1575	125 bales,
	1576–1775	200 "
		325 bales each containing, 1,000

bags, equals 325,000 bags, on the following grounds:

We claim that said bags are entitled to free entry under the provisions of paragraph 493 of the free list of the Act of October 1st, 1890, as bags

of American manufacture exported filled with American products and not dutiable as assessed by you.

We claim that if not free of duty as above set forth the bags are entitled to free entry under the provisions of Sec. 7, of the Act of February 8th, 1875, which provides that bags other than of American Manufacture in which grain shall have been actually exported from the United States, may be returned empty to the United States free of duty and that same are not dutiable as assessed.

We claim that the Act of February 8th, 1875, is still in full force and effect and has not been repealed by any Statute of the United States and that the regulations for the free entry of bags other than of American manufacture prescribed by the Secretary of the Treasury are still in force and that we have complied with said regulations in all respects.

We claim that the goods were not fairly and faithfully examined by the appraisers, and that the assessment of two (2) cents per pound in the entire contents of the packages on the ground that they were found, in the opinion of the appraiser, to contain a mixture of foreign with American bags is incorrect, and the goods being all of one value whether of foreign or American make, do not come under the provisions of Sec. 2910 of the Revised Statutes.

We claim refund of the duties illegally exacted.

Very respectfully,
(Signed) RANLETT & STONE.

Copy of Letter to Collector, Nov. 8, 1893, and of Protest, Jan. 4, 1894.

Filed with petition June 1, 1894.

Slip attached to copy of letter and protest:

(Written in red ink)—
850 bales=850,000 bags.
(Written in black ink)
"Assaye" | ss | . entered November 8, 1893
Impost entry No. 7262 dated November 11, 1893.
Entry liquidated December 27, 1893.
Protest filed January 4, 1894.
(Written in red ink)
Free entry refused.

NOVEMBER 8, 1893.

Hon. T. S. WILKINSON,
Collector of Customs, New Orleans, La.

DEAR SIR—In reference to our impost entry of this date for

K.	1776-2175	400
	2176-2525	350
	2526-2625	100
		850

Bales returned empty wheat bags per "Assaye" | ss | entered November 8th, 1893, for which free entry was made November 8th, 1893. We respectfully request that it be placed on record that said impost entry is

made by authority of the Secretary of the Treasury, as per his telegram of November 3rd, 1893, in order to enable us to obtain possession of such portion of the shipment as is not required by the appraisers for examination and is made without prejudice to the aforesaid free entry or of the return to us of the duties deposited should the goods not be appraised as of foreign manufacture or to our right to protest and appeal should the goods not be appraised as of American manufacture.

Yours faithfully,

(Signed) RANLETT & STONE.

(Copy.)

NEW ORLEANS, *January 4th, 1894.*

Hon. THEO. S. WILKINSON,
Collector of Customs, New Orleans, La.

SIR—We hereby protest against your decision, liquidation and rate and amount of duties assessed by you at two (2) cents per pound on our importation of returned American bags per "Assaye" | ss | entered November 8th, 1893, impost entry No. 7262, dated November 11th, 1893, liquidated December 27th, 1893, marked:

United States,

K	1776-2175	400 bales,
	2176-2525	350 "
	2526-2625	100 "

850 bales, each containing 1,000 bags, 850,000 bags, on the following grounds:

We claim that said bags are entitled to free entry under the provisions of paragraph 493 of the free list of the Act of October 1st, 1890, as bags of American manufacture exported filled with American products and not dutiable as assessed by you.

We claim that if not free of duty as above set forth the bags are entitled to free entry under the provisions of Sec. 7 of the Act of February 8th, 1875, which provides that bags other than of American manufacture in which grain shall have been actually exported from the United States may be returned empty to the United States free of duty and that same are not dutiable as assessed.

We claim that the Act of February 8th, 1875, is still in full force and effect and has not been repealed by any Statute of the United States, and that the regulations for the free entry of bags other than of American manufacture prescribed by the Secretary of the Treasury are still in force and that we have complied with said regulations in all respects.

We claim that the goods were not fairly and faithfully examined by the appraisers as provided by sections 2614 and 2901 of the Revised Statutes. That 85 bales of the shipment were ordered to the Appraisers' Stores, to be opened, examined and appraised, but 16 bales only were opened or examined.

We claim that the assessment of two (2) cents per pound on the entire contents of the packages on the ground that they were found in the opinion of the appraiser to contain a mixture of foreign with American bags is incorrect, and that the bags, being all of one value, whether of

foreign or American make, do not come under the provisions of section 2910 of the Revised Statutes.

We claim refund of the duties illegally exacted.

Very respectfully,

(Signed) RANLETT & STONE.

Copy of Protest dated Jan. 15, 1894.

Filed with petition June 1, 1894.

Slip attached to protest.

(Written in red ink.)
300 bales = 300,000 bags.
(Written in black ink.)
"Traveller" | ss | entered December 26th, 1893.
Free entry No. 8168 dated December 28th, 1893.
Entry liquidated January 6th, 1894.
Protest filed January 15th, 1894.

NEW ORLEANS, *January 15, 1894.*

Hon. THEO. S. WILKINSON,
Collector of Customs, New Orleans, La.:

SIR—We hereby protest against your decision, liquidation and rate and amount of duties assessed by you at two (2) cents per pound on our importation of empty returned grain bags per Traveller | ss | entered December 26th, 1893, free entry No. 8168, dated December 28th, 1893, liquidated January 6th, 1894, marked:

United States.

2626–2725	100 bales,
2726–2825	100 "
2826–2925	100 "

300 bales, each containing, 1,000 bags, equal 300,000 bags, on the following grounds:

We claim that said bags are entitled to free entry under the provisions of paragraph 493 of the free list of the Act of October 1st, 1890, as bags of American Manufacture exported filled with American products and not dutiable as assessed by you.

We claim that if not free of duty as above set forth the bags are entitled to free entry under the provisions of Sec. 7. of the Act of February 8th, 1875, which provides that bags other than of American Manufacture in which grain shall have been actually exported from the United States, may be returned empty to the United States free of duty and that same are not dutiable as assessed.

We claim that the Act of February 8th, 1875 is still in full force and effect and has not been repealed by any Statute of the United States, and that the regulations for the free entry of bags other than of American Manufacture prescribed by the Secretary of the Treasury are still in force and that we have complied with said regulations in all respects.

We claim that the goods were not fairly and faithfully examined by the appraisers, and that the assessment of two (2) cents per pound on

the entire contents of the packages on the ground that they were found, in the opinion of the appraiser, to contain a mixture of foreign with American bags is incorrect, and the goods being all of one value whether of foreign or American make, do not come under the provisions of Sec. 2910 of the Revised Statutes.

We claim refund of the duties illegally exacted.

Very respectfully,
(Signed) RANLETT & STONE.

Copy of Protest dated Jany. 27, 1894,

Filed with Petition June 1, 1894.

Slip attached to Copy of Protest.

(Written in red ink)—
100 Bales = 100,000 Bags.
(Written in black ink)
Pallas | ss | entered January 4th, 1894
Free entry No. 103 dated January 5th, 1894
Entry liquidated January 19th, 1894.
Protest filed January 27, 1894.

NEW ORLEANS, *January 27, 1894.*

Hon. THEO. S. WILKINSON,
Collector of Customs, New Orleans, La.

SIR—We hereby protest against your decision, liquidation and rate and amount of duties assessed by you at two (2) cents per pound on our importation of returned empty wheat bags per Pallas | ss | entered January 4th, 1894, Free entry No. 103
January 5th, 1894, liquidated January 19th, 1894, marked:
United States,

2926–3025 100 Bales, each containing 1,000 bags, equals 100,000 bags, on the following grounds:

We claim that said bags are entitled to free entry under the provisions of paragraph 493 of the free list of the Act of October 1, 1890 as bags of American Manufacture exported filled with American products and not dutiable as assessed by you.

We claim that if not free of duty as above set forth the bags are entitled to free entry under the provisions of Sec. 7, of the Act of February 8, 1875, which provides that bags other than of American manufacture in which grain shall have been actually exported from the United States, may be returned empty to the United States free of duty and that same are not dutiable as assessed.

We claim that the Act of February 8, 1875 is still in full force and effect and has not been repealed by any statute of the United States, and that the regulations for the free entry of bags, other than of American manufacture prescribed by the Secretary of the Treasury are still in force, and that we have complied with said regulations in all respects.

We claim that the goods were not fairly and faithfully examined by the appraisers, and that the assessment of two (2) cents per pound on the

entire contents of the packages on the ground that they were found in the opinion of the appraiser, to contain a mixture of foreign with American bags is incorrect, and the goods being all of one value whether of foreign or American make, do not come under the provisions of Sec. 2910 of the Revised Statutes.

We claim refund of the duties illegally exacted.

Very respectfully,

(Signed) RANLETT & STONE.

Copy of Protest Dated Jany. 30, 1894.

Filed June 1, 1894.

Slip attached to Copy of Protest.

(Written in red ink.)
100 Bales = 100,000 Bags.
(Written in black ink.)
Engineer | ss | entered January 15th, 1894.
Free entry No. 339 dated January 17th, 1894.
Entry liquidated January 25th, 1894.
Protest filed January 30th, 1894.

NEW ORLEANS, *January 30th, 1894.*

Hon. THEO. S. WILKINSON,
Collector of Customs, New Orleans, La.

SIR—We hereby protest against your decision, liquidation and rate and amount of duties assessed by you at two (2) cents per pound on our importation of returned empty wheat bags per "Engineer | ss | entered January 15th, 1894, Free entry No. 339 dated January 17th, 1894, liquidated January 25th, 1894, marked:

United States,

3026–3125 100 Bales, each containing 1,000 bags equals 100,000 bags, on the following grounds:

We claim that said bags are entitled to free entry under the provisons of paragraph 493 of the free list of the Act of October 1st, 1890, as bags of American Manufacture exported filled with American products and not dutiable as assessed by you.

We claim that if not free of duty as above set forth the bags are entitled to free entry under the provisions of Sec. 7, of the Act of February 8th, 1875, which provides that bags other than of American manufacture in which grain shall have been actually exported from the United States, may be returned empty to the United States free of duty and that same are not dutiable as assessed.

We claim that the Act of February 8th, 1875 is still in full force and effect and has not been repealed by any statute of the United States, and that the regulations for the free entry of bags other than of American manufacture prescribed by the Secretary of the Treasury are still in force and that we have complied with said regulations in all respects.

We claim that the goods were not fairly and faithfully examined by the appraisers, and that the assessment of two (2) cents per pound on the

entire contents of the packages on the ground that they were, found in the opinion of the appraiser, to contain a mixture of foreign with American bags is incorrect, and the goods being all of one value whether of foreign or American make, do not come under the provisions of Sec. 2910 of the Revised Statutes.

We claim refund of the duties illegally exacted.

Very respectfully,

(Signed) RANLETT & STONE.

Communication of Ranlett & Stone to Geo. C. Tichenor, Pres't of the Board April 9, 1894, stating grounds for reversing the decision of the Collector.

Filed June 1, 1894, with petition.

NEW ORLEANS, *April 9th, 1894.*

GEO. C. TICHENOR, Esq.,
President, Board U. S. General Appraisers, New York, N. Y.

DEAR SIR—Confirming our protests against the decision of the Collector of this Port in liquidating and assessing a duty of two (2) cents per pound on our importations of returned empty grain bags, viz:

600	bales, per	"Engineer"	Entered	Aug. 14, 1893.
650	"	"Legislator"	"	Sept. 7, 1893.
325	"	"Vesta"	"	Oct. 19, 1893.
850	"	"Assaye"	"	Nov. 8, 1893.
300	"	"Traveller"	"	Dec. 26, 1893.
100	"	"Pallas"	"	Jan. 4, 1894.
100	"	"Engineer"	"	Jan. 15, 1894.

2925 bales, of 1000 each, equals 2,925,000 bags.

We beg to submit the following facts in support of our claim for a reversal of said decision and a reliquidation of the entries,

We claim that these bags were of American manufacture, shipped from this country, filled with the products thereof, as shown by papers attached to entries, and consequently entitled to free entry on their return, and we have complied with the law and Treasury regulations as to the production of the sworn statements of the English shippers as to the origin of the goods and certificated of the Pacific coast Customs Authorities as to their exportation therefrom filled with wheat, which prima facie evidence of their being of the manufacture of this country has not been disproved.

We claim that the experience and knowledge of the United States Examiner at this Port, as is shown by the evidence was not such as to enable him to determine as to the origin of the goods; that his testimony at the hearing had here was both too inadequate and contradictory, and the samples retained by him, 87, one each out of 87 bales, representing shipments aggregating 2,925 bales, were neither sufficient in number nor so fairly drawn as to faithfully represent the goods, and form a just basis for the action of the Collector; and further, that the evidence and opinion of Mr. Naeff, called in as expert by the Appraiser of this Port of behalf of the Government, were diametrically opposite to those of the Examiner.

We claim that the evidence shows that the Examiner's estimate of the percentages of such bags as he considered to be Foreign and such as he considered to be domestic, were not based on facts such as could be derived only from an actual and careful count of the packaged bag by bag, but was simply a rough estimate.

We claim that the evidence shows that the goods were not lawfully examined as provided under Section 2901 of the Revised Statutes which states that one package of every ten shall be *opened*, *examined* and *appraised*, and that failure to comply with said statute invalidated the appraisement, and in support of this claim cite the decision of the U. S. Supreme Court in the case of Converse vs. Burgess, 18th Howard, p. 413.

We submit in evidence all the entries and the invoices, certificates and papers attached thereto, or in the possession of the Customs Authorities in reference to our claim.

We respectfully request that our protests may be acted upon and decision rendered as promptly as possible consistent with a careful and just consideration of the facts.

Very respectfully,
(Signed) RANLETT & STONE.

Examination of Witnesses before General Appraiser F. B. Wilkinson at the Customhouse in New Orleans on 27 March, 1894,

Was filed as part of Petition, June 1, 1894, and now to be considered an exhibit in the cause, but not to constitute a part of the petition, as per Order to Amend Petition and to strike out, etc. See page 31 of this Transcript.

Answer.

Filed June 13, 1894.

United States Circuit Court, Eastern District of Louisiana.

IN RE RANLETT & STONE
vs.
BOARD OF GENERAL APPRAISERS. } No. 12,313.

Now comes the United States by F. B. Earhart, United States Attorney for said United States, and for answer unto the petition filed in this cause to review the decision of the General Board of Appraisers therein mentioned, denies that there is error in said decision as is alleged, and avers that the same is in all respects valid and in conformity with the law in such cases made and provided.

Wherefore, respondent prays that said petition may be dismissed and that said decision be affirmed, and that respondent may have his cost.

(Signed) F. B. EARHART,
United States Attorney.

Motion to Rescind Order and Dismiss Application for Review.

Filed July 2, 1894.

United States Circuit Court.

IN RE RANLETT & STONE
vs.
BOARD OF GENERAL APPRAISERS. } No. 12,313.

Now comes F. B. Earhart, United States attorney, and herein suggesting that on June 1st, 1894, this honorable court issued an order to the United States Board of General Appraisers to make "return to this honorable court of the record and the evidence taken before them as to the matter involved in the application for review herein together with a certified statement of the facts in the case and their decision thereon"—and said attorney appearing herein on behalf of said Board of General Appraisers and the collector of the port of New Orleans reserving all rights of the United States herein—moves the court that the said order be rescinded and said application for review be dismissed for this, to-wit:

That said petition and application for review as herein prayed for by the said Ranlett & Stone, Importers, does not contain a concise statement of the errors of law and facts complained of in the decision of the said Board of General Appraisers of the United States, as required by law in such cases made and provided. That a copy of this motion be served on the said importers, and set down for hearing.

Hearing and Submission of Motion to Rescind, etc.

Extract from the Minutes, April Term, 1894.

NEW ORLEANS, *Monday, July 2, 1894.*

Court met, pursuant to adjournment.

Present: Hon. Charles Parlange, District Judge.

IN RE RANLETT & STONE
vs.
BOARD U. S. GENERAL APPRAISERS. } No. 12,313.

This cause came on to be heard this day to be heard upon the motion presented by the United States to dismiss the application of the petitioners herein for a review of the decision of the Board of U. S. General Appraisers.

F. B. Earhart, U. S. Attorney, appearing for movers.

T. J. Semmes for petitioners herein, Ranlett & Stone, and was argued and submitted—when the court took time to advise.

Order.

Entered and filed July 3, 1894.

IN RE RANLETT & STONE
vs.
BOARD U. S. GENERAL APPRAISERS. } No. 12,313.

On the hearing of the motion to dismiss the application of the petitioners Ranlett & Stone, it is adjudged that said motion be rejected

inasmuch as the documents annexed to the petition as part thereof constitute a part of said petition, and the said documents set forth in a concise manner the errors of law and of fact complained of.

It is further ordered that a copy of the petition and of all the documents thereto annexed as part thereof except the document containing the testimony referred to in the petition which by amendment this day allowed has ceased to be a part of the petition be served on T. S. Wilkinson the collector of this port.

It is further ordered that the Board of Appraisers do forthwith return to this court the record and the evidence taken by them in this case together with a certified statement of the facts involved in the case and their decisions thereon as required by Section 15 of the Act of Congress, approved June 10, 1890, Ch. 417.

New Orleans, July 3d, 1894.

(Signed) CHARLES PARLANGE,
U. S. Judge.

Motion of Applicants to Amend their Petition and to strike out Certain Words in reference to making the testimony annexed to the petition a part thereof.

Entered and Filed July 3, 1894.

United States Circuit Court, Eastern Dist. of La.

IN RE RANLETT & STONE
vs.
BOARD OF GEN'L APPRAISERS } No. 12,313.

On motion of Thos. J. Semmes of counsel for Ranlett & Stone the applicants,

It is ordered that the following sentences in the petition filed by said applicants, to-wit:

"Said testimony was taken in the city of New Orleans on 27 March, 1894, a copy of which is hereto annexed as part hereof" be amended by striking out the words "as part hereof" so as to have the said testimony an exhibit in the cause, but not to constitute a part of the petition.

Bill of Exceptions No. 1.

Filed July 3, 1894.

United States Circuit Court, Eastern District of Louisiana.

IN RE RANLETT & STONE
vs.
BOARD OF GENERAL APPRAISERS. } No. 12,313.

Be it remembered that on the 2nd day of July, A. D. 1894, before said court the motion to rescind the order granted herein on the application of said "Ranlett and Stone," importers, as well as to dismiss their

application for review herein, came on for hearing; present, F. B. Earhart, United States Attorney for the General Board of Appraisers and the Collector of the Port of Orleans, and Thomas J. Semmes, Esq., for said importers, and after hearing argument of Counsel the Court took the said motion under advisement, and on the 3rd day of July, A. D. 1894, overruled said motion hereto annexed by an order, both of which motion and order are made part hereof as if the same were fully recited herein. Whereupon said F. B. Earhart, United States Attorney, excepted to said ruling and reserves this his bill of exceptions, and now presents the same to the court for signature.

New Orleans, July 3d, 1894.

In open court.

(Signed) CHARLES PARLANGE,
U. S. Judge.

Return of the Board of U. S. General Appraisers.

Filed August 10th, 1894.

In the Circuit Court of the United States for the Eastern District of Louisiana.

(Signed)
H. T. WALDEN.
[Seal.]
Acting Chief Clerk Board of General Appraisers.

H. T. W.

In the matter of the application of Ranlett & Stone for a review of the decision of U. S. General Appraisers as to the rate and amount of duty on certain merchandise imported by them in the vessels and at the dates hereinafter named.

Suit No. 1225.

Return of the Board of United States General Appraisers to the order of Hon. Charles Parlange, District Court Judge.

Dated New York, August 7th, 1894.

The Board of United States General Appraisers, sitting at New York, in response to the order of the court in the above matter, make the following return of the record and evidence taken by them in the above matter, and of the facts involved therein, as ascertained by them.

They state that letters (hereto annexed and marked Exhibits "A" and "B") were received from the Collector of Customs at New Orleans, submitting under the provisions of Section 14 of the Act of June 10, 1890, the protests (marked Exhibits "C," "D," "E" and "F") described as follows:

Coll's No.	Board No.	Protestant.	Vessel.	Dt. Entry.
476	21861-B,	Ranlett & Stone,	Engineer,	Oct. 10, '93
479	21862-B,		Vesta,	Oct. 31, '93
480	21863-B,		Legislator,	Oct. 3, '93
481	21965-B,		Assaye,	Nov. 11, '93

They state that a letter (copy of which is hereto annexed and marked Exhibit "G") was received from the Collector of Customs at New Orleans, submitting, under the provisions of Section 14 of the Act of

June 10, 1890, the protests (marked Exhibits "H," "I" and "J"), described as follows:

Coll's No.	Board No.	Protestant.	Vessel.	Dt. Entry.
485	22185–B,	Ranlett & Stone,	Traveller,	Dec. 28, '93
489	22186–B,		Pallas,	Jan. 5, '94
490	22187–B,		Engineer,	Jan. 17, '94

That accompanying the letters of the Collector aforesaid were reports from the U. S. Appraiser at New Orleans, describing the merchandise subject of said protests, which reports are hereto annexed and marked Exhibits "K," "L," "M," "N," "O" & "P."

There is returned herewith the testimony taken by the board relating to the protests covered by the decision herein. Said testimony is marked Exhibit "Q."

That on the 21st day of May, 1894, the Board of General Appraisers rendered its decision in the matter of said protests 21861–B, &c., a copy of which decision is hereto annexed and marked Exhibit "R."

Exhibit "A."

J. C.

PORT OF NEW ORLEANS, *January 6th, 1894.*

Hon. GEORGE C. TICHENOR,
President of the General Board of U. S. General Appraisers,
123 Bleecker Street, New York:

SIR: I have the honor to transmit herewith protests of Ranlett & Stone against the assessment of duty at the rate of two cents per pound on certain empty grain bags imported as follows:

No. of Protest.	Date of Entry.	Vessel.
21861 B		
476	October 10, 1893.	"Engineer."
21862		
479	" 31, "	"Vesta."
21863		
480	" 2, "	"Legislator."

It appears that the merchandise consists of the ordinary empty jute grain bag, claimed to have been exported from the United States filled with grain and returned empty, but that the Appraiser on examination reports that "after a careful examination of this importation of bags we are of opinion that foreign made bags are contained therein," and that duty was, therefore, assessed on said bags under paragraph 365, N. T., at the rate of 2 cents per pound.

It is contended by the protestants that the bags are entitled to free entry under paragraph 493, N. T., as bags of American manufacture exported filled with American products and returned empty; that if not free under the paragraph cited, to be entitled to free entry under the provisions of section 7 of the Act of February 8, 1875, as bags of other than American manufacture in which grain shall have been actually exported from the United States, and which are subsequently returned empty. It is further claimed that the act of February 8, 1875, is still

in full force and effect, not having been repealed by any statute of the United States, and that the regulations prescribed by the Treasury Department thereunder are still in force and have been complied with in all respects. It is also claimed that the goods were not fairly and faithfully examined by the appraiser, and that the assessment of duty on the entire contents of the packages on the ground of containing a mixture of foreign with American bags is incorrect, the goods being all of one value, whether foreign or American make, do not come under the provisions of section 2910 R. S.

In connection with the importations the protestants have produced the foreign consular certificates required by the regulations.

The protests, entries, invoices and appraiser's reports are enclosed.

Respectfully yours,

(Signed) THEO. S. WILKINSON,
Collector.

(Three sets enclosures.)

(Endorsed:) 37456 Po 21861 21863. Custom-House. Collector's Office, New Orleans, La. Jan. 6, 1894. Theo. S. Wilkinson, Collector. Empty grain bags, Subject to protests Ranlett & Stone against assessment duty at rate of 2c. per lb. on returns empty grain bags. 37456 Po. Received Jan. 10, 1894. Board U. S. Gen. App'rs., New York. No. of Enclosures, Three sets. 17 Enc. E. W.

Exhibit "C."—A copy—of which Exhibit "C" is the original—appears at page 9 of this Transcript; but the following figures, stamp and endorsement as contained in said original "Exhibit C," does not appear on the copy as set forth at said page 9, viz.:

21861. No. 476—Stamped: Custom-House, Received Dec. 23, 1893, New Orleans. Endorsed: No. 467. New Orleans, La., Dec. 23, 1893. Ranlett & Stone, 37456 Po. Protest against assessment duty at rate of two (2) cents per pound on returned empty wheat bags claimed to be free under par. 493, Act of Oct. 1, 1890, or Section 7, Act Feb. 8, 1875. Vessel, Engineer; character of entry, Consumption; date of entry, Oct. 10, 1893; entry liquidated, Dec. 15, 1893; protest filed Dec. 23, 1893; appeal filed ——.

Exhibit "D."—A copy—of which Exhibit D is the original—appears at page 14 of this transcript; but the following figures, stamp and endorsement as contained in said original "Exhibit D," does not appear on the copy as set forth at said page 14, viz.:

21862. No. 479. Stamped: Custom-House. Received Dec. 30, 1893, New Orleans. Endorsed: No. 479. New Orleans, La., Dec. 30, 1893. Ranlett & Stone. 37456 Po. Protest against assessment duty at rate of two (2) cents per pound on empty returned grain bags, claimed to be free under par. 493, Act Oct. 1, '90, or Sec. 7, Act Feb. 8, '75. Vessel, "Vesta;" character of entry, Consumption; date of entry, Oct 31, 1893; entry liquidated, Dec. 22, 1893; protest filed Dec. 30, 1893; appeal filed ——.

Exhibit "E."—A copy—of which Exhibit "E," is the original—appears at page 12 of this Transcript; but the following figures, stamp and endorsement as contained in said original Exhibit E, does not appear on the copy as set forth at said page 12, viz.: 21863. No. 480. Stamped: Custom-House. Received Dec. 30, 1893. New Orleans.

(Endorsed:) No. 480. New Orleans, La., Dec. 30, 1893. Ranlett & Stone. Protest against assessment duty at rate of two (2) cents per pound on returned empty grain bags, claimed to be free under par. 493, act Oct. 1, 1890, or Section 7, act of Feb. 8, 1875. 37456 Po. Vessel "Legislator;" character of entry, consumption; date of entry, Oct. 3, 1893; entry liquidated, Dec. 21, 1893; protest filed Dec. 30, 1893: appeal filed ——.

Exhibit "K."

PORT OF NEW ORLEANS, LA., APPRAISER'S OFFICE,
January 4, 1894.

Hon. T. S. WILKINSON, *Collector of Customs:*

SIR—Respectfully referring to the protest of Ranlett & Stone against the liquidation of Impost Entry No. 6675, 21861 I have to report that this importation consisted of 600 bales cental bags Ex s-s Engineer from Liverpool, August 14, 1893, and were found upon examination by this office to contain bags of foreign manufacture.

This office returned them as dutiable at 2 cts. per lb. under Par. 365. See notation on invoice.

Respectfully,
(Signed) CHAS. F. ALBA,
21861 *Appraiser.*
(1 set enclosed return.)

Exhibit—"L."

PORT OF NEW ORLEANS, LA., APPRAISER'S OFFICE,
January 4, 1894.

Hon. T. S. WILKINSON, *Collector of Customs,*

SIR—Respectfully referring to the protest of Ranlett & Stone against the liquidation of Impost Entry No. 6400 21863 I have to report that this importation consisted of 650 Bales Cental Bags Ex s-s Legislator from Liverpool, Sept. 7, 1893, and were found upon examination by this department to contain bags of Foreign Manufacture and were returned as dutiable at 2 cts. per lb. under Par. 365—see notation on invoice.

Enclosures are herewith returned.

Respectfully,
21863 (Signed) CHAS. F. ALBA,
(1 set enclosures returned) *Appraiser.*

Exhibit—"B"

OFFICE OF THE COLLECTOR OF CUSTOMS,
J. C *Port of New Orleans, January 18th, 1894.*

Hon. GEORGE C. TICHENOR,
President of the General Board of U. S. General Appraisers,
123 Bleecker Street, New York City.

SIR—I have the honor to submit a protest of Ranlett & Stone against the assessment of duty at the rate of 2 cents per pound on certain empty

jute grain bags imported per "Assaye" November 11, 1893, and entered for immediate consumption on arrival.

It appears that the merchandise consists of the ordinary jute grain bags, claimed to have been exported from the United States filled with grain and returned empty, but that the appraiser on examination reports that "after a careful examination of this importation of bags we are of opinion that foreign made bags are contained therein," and that duty was, therefore, assessed on the said bags under paragraph 365, N. T., at the rate of 2 cents per pound.

It is contended by the protestants that the bags are entitled to free entry under paragraph 493, N. T., as bags of American manufacture exported filled with American products and returned empty; that, if not free under the paragraph cited, they are entitled to free entry under the provisions of section 7 of the act of February 8, 1875, as bags of other than American manufacture in which grain shall have been actually exported from the United States, and which are subsequently returned empty. It is further claimed that the act of February 8, 1875, is still in full force and effect, not having been repealed by any statute of the United States, and that the regulations prescribed by the treasury department thereunder are still in force and have been complied with in all respects. It is also contended that the goods were not fairly and faithfully examined by the appraiser, and that the assessment of duty on the entire contents of the packages on the ground of containing a mixture of foreign with American bags is incorrect, the goods being all of one value, whether foreign or American, do not come under the provisions of section 2910, R. S.

In connection with the importations the protestants have produced the foreign consular certificates required by the regulations.

The appraiser reports with regard to the examination that the bags were subjected to a very thorough and critical inspection, and that a larger per cent. of the bales were opened than has heretofore been the practice, and that the regulations have been complied with in all respects in the examination and classification of the merchandise under consideration. The appraiser files with his report a statement to the same effect from the examiner of merchandise and the assistant appraiser who personally made the inspection of the bags.

The protest, invoices (3) and appraiser's report are enclosed.

Respectfully yours,

(Signed) CALHOUN FLUKER,
Sp. D'y Collector.

(Five enclosures.)

(Endorsed:) 37751 Po 21965—Custom-House, Collector's office, New Orleans, La., Jan. 18, 1894. Theo. S. Wilkinson, collector. Empty grain bags.—Subject: Protest Ranlett & Stone, assessment duty at 2c per lb. on empty jute bags. 37751 Po. Stamped: Received by Board of U. S. General Appraisers Jan. 22, 1894. No. of Inclosures, Five. E. & W.

Exhibit "F."

A copy—of which Exhibit "F" is the original—appears at page 17 of this transcript; but the following figures, stamp and endorsement as contained in said original Exhibit "F," does not appear on the copy as set forth at said page 17.

21965. No. 481. Stamped: Custom House, Received Jan. 5, 1894, New Orleans. Endorsed—No. 481. New Orleans, La., Jan. 4, 1894. Ranlett & Stone. Assessment duty at rate 2c per lb. on returned American grain bags claimed to be entitled to free entry. 37,751 Po. Vessel "Assaye;" Character of Entry Nov. 11, 1893; Entry Liquidated Dec. 27, 1894; Protest filed Jan. 5, 1894; Appeal filed ———

Exhibit "M."

PORT OF NEW ORLEANS, LA., APPRAISER'S OFFICE,
January 16, 1894.

Hon. T. S. WILKINSON, *Collector of Customs.*

SIR—Referring to the protest of Mess. Ranlett & Stone against the liquidation of Impost Entry No. 7262 for 850 Bales Cental Bags, and wherein this office is charged with not having fairly and faithfully examined the goods, I beg to say that this department has complied with the customs regulations in the examination of all merchandise and particularly so in the matter of Cental Bags, in support of which I file herein the report of Examiner Keeting to me, as part of my report. I further claim that these bags were properly returned by this office as dutiable at 2 cts. per lb. under par. 365.

I will state that Mr. Ranlett of the firm of Ranlett and Stone, informed me during the month of November last past, that he wanted a decision one way or the other, stating that the bags were sold to them free of duty and if found to be of foreign manufacture, they would hold the exporters for the difference. I have no doubt that the correspondence relative to the contract and purchase of these bags can be procured by the government, which would greatly aid the department in the solution of this bag question.

Very respectfully,
(Signed) CHAS. F. ALBA,
Appraiser.

(Enclosures returned.)

PORT OF NEW ORLEANS, LA., EXAMINER'S OFFICE,
January 13th, 1894.

Hon. CHAS. F. ALBA,
Appraiser of Merchandise:

SIR—In reference to the claim of Messrs. Ranlett and Stone, that certain importations of Cental bags consigned to them were not fairly examined by the appraiser at this port, I would respectfully state that every invoice of bags examined since you have been in charge of the Appraiser's Office, has been subjected to a very thorough and critical inspection, and a larger per cent. of the bales have been opened than has

heretofore been the custom. I rather anticipated complaint on the part of the importers, for having been compelled to cut the iron ties on so large a number of the bales in order to secure therefrom the proper samples to prove the classification of the merchandise to be correct. All importations of bags consigned to Messrs. Ranlett & Stone present about the same appearance, and from a careful study of the bag question, and from the most reliable information I have been able to obtain from others who claim to be expert judges in the matter, I am firmly of the opinion that a considerable proportion of all the Cental bags shipped to them at this port and examined by me, are unquestionably of *foreign manufacture.*

Very respectfully,
(Signed) CHAS. W. KEETING,
Examiner.

I hereby concur,
(Signed) E. P. PRUDHOMME,
Assistant Appraiser.

Exhibit "G."

(Copy.)

PORT OF NEW ORLEANS, *Feb. 16, 1894.*

HON. GEO. C. TICHENOR,
President of the General Board United States General Appraisers,
123 Bleecker Street, N. Y. City.

SIR—I have the honor to submit protests, as per schedule below, against the assessment of duty at the rate of 2 cents per pound on certain returned cental bags imported at this port by the vessels and at the times named.

The merchandise was reported by the Appraiser as "Empty jute grain bags, 2 cents per pound (365). After a careful examination of this importation of bags we are of opinion that foreign made bags are contained therein," and duty was therefore assessed thereon at 2 cents per pound under paragraph 365, N. T.

The protestants claim in general:

1st: that the bags are entitled to free entry under paragraph 493 of the tariff act as bags of American manufacture, exported filled with American products; and

2d: that if not free under said paragraph of the present Act, they are entitled to free entry under section 7 of the Act of February 8, 1875, providing that bags other than of American manufacture in which grain shall have been actually exported from the United States, may be returned empty to the United States under regulations of the Secretary of the Treasury, it being contended in connection with this claim that the Act of February 8, 1875, is still in full force and effect, not having been repealed by any statute of the United States, and that the regulations of the Secretary of the Treasury thereunder have been complied with.

It is also claimed that the goods were not fairly and faithfully examined by the Appraiser, and that the assessment of duty at the rate of 2 cents per pound upon the entire contents of the packages on the ground that they were found, in the opinion of the Appraiser, to contain a mixture of foreign with American bags is incorrect, and the goods being all of

one value whether of foreign or American make do not come under the provisions of section 2910 of the Revised Statutes. The protests, invoices and Appraiser's reports are enclosed herewith.

Respectfully yours,
(Sd.) CALHOUN FLUKER,
Sp. Dy. Collector.

Schedule.

* * * * * * *

485, Ranlett & Stone, Traveller, Dec. 28, 1893.
489, Ranlett & Stone, Pallas, Jany. 5, 1894.
490, " " Engineer, " 17, "

* * * * * * *

Exd. M. N. M.

Exhibit "H."—A copy—of which Exhibit "H" is the original—appears at page 19 of this transcript; but the following figures, stamp and endorsement as contained in said original Exhibit "H," does not appear on the copy as forth at said page 19;

22185. No. 485. Stamped: Custom House, received Jan. 15, 1894. New Orleans. Endorsed: 485. New Orleans, La., Jan. 15, 1894. Ranlett & Stone. Assessment duty at 2c per lb. on returned empty wheat bags, claimed to be free under par. 493, free list, Act Oct. 1, 1890, or Sec. 7, Act Feb. 8, '75. 38787 Po. Vessel "Traveller;" character of entry, Consumption; date of entry, Dec. 28, 1893; entry liquidated, Jan. 6, 1894; protest filed Jan. 15, 1894; appeal filed ——.

Exhibit "I."—A copy—of which Exhibit "I" is the original—appears at page 21 of this transcript; but the following figures, stamp and endorsement as contained in said original Exhibit "I," does not appear on the copy as set forth at said page 21:

22186. No. 489. Stamped: Custom House, received Jan. 27, 1894. New Orleans. Endorsed: 489. New Orleans, La., Jan. 27, 1894. Ranlett & Stone. 38787 Po. Assessment duty at 2c per lb. on returned empty wheat bags, claimed to be free under par. 493, free list, Act Oct. 1, 1890, or Sec. 7, Act Feb. 8, '75. Vessel "Pallas;" character of entry, Consumption; date of entry, Jan. 5, 1894; date liquidated, Jan. 18, 1894; protest filed Jan. 27, 1894; appeal filed ——.

Exhibit "J."

A copy—of which Exhibit "J," is the original—appears at page 23 of this transcript; but the following figures, stamp and endorsement as contained in said original Exhibit "J," does not appear on the copy as set forth at said page 23, viz:

22,187—No. 490—Stamped: Custom House, Received Feb. 3, 1894—New Orleans. Endorsed: 490—New Orleans, La., Jan. 30, 1894—38,787 Po Ranlett & Stone,—Assessment duty at rate 2c. per pound on returned empty wheat bags, claimed to be free under par. 493, act Oct.

1, 1890, or Sec. 7, act Feb. 8, 1875—Vessel, "Engineer;" Character of Entry, Consumption; Date of Entry, Jan. 17, 1894; Entry Liquidated, Jan. 25, 1894; Protest filed, Feb. 3, 1894; Appeal filed ———.

Exhibit "N."

PORT OF NEW ORLEANS, LA., APPRAISER'S OFFICE,
January 23, 1894.

Hon. T. S. WILKINSON, *Collector of Customs:*

SIR—Referring to the protest of Ranlett & Stone against the liquidation of Impost Entry No. 8168, for 300 Bales Cental Bags, Ex | s-s. | Traveller, Dec. 26, 1893, I beg to state that these bags were thoroughly examined, and presented the same appearance as did all the preceding lots examined by this office and returned as containing bags of foreign manufacture.

These bales were returned by this Department as dutiable at 2 cents per lb. under par. 365. I beg to state further that we have complied with the regulations in the matter of the examination of these bags.

Enclosures are herewith returned.

Respectfully,
(Signed) CHAS. F. ALBA,
Appraiser.

Exhibit "O."

PORT OF NEW ORLEANS, LA., APPRAISER'S OFFICE,
February 2, 1894.

Hon. T. S. WILKINSON, *Collector of Customs.*

SIR—Referring to the protest of Ranlett & Stone against the liquidation of Impost Entry No. 103, for 100 bales empty wheat bags ex. s-s Pallas, from Liverpool, January 4, 1894, I beg to report:

That this importation bears the same appearance as did the several similar lots returned by this Department as containing bags of foreign manufacture, and was returned as dutiable at 2 cents per pound, under paragraph 365.

I beg to state further, that this lot was examined carefully and the regulations complied with relative thereto.

Enclosures are herewith returned.

Respectfully.
(Signed) CHAS. F. ALBA,
Appraiser.

(1 set Enclosures.)

Exhibit "P."

PORT OF NEW ORLEANS, LA., APPRAISER'S OFFICE,
February 16, 1894.

Hon. T. S. WILKINSON, *Collector of Customs.*

SIR—Referring to the protest of Ranlett & Stone against the liquidation of Impost Entry No. 339 for 100 Bales Bags, Ex s-s Engineer, from Liverpool, January 15, 1894, I beg to state, that this importation of

bags, claimed to be entitled to free entry as bags of American manufacture, was found upon examination in this department, to contain bags of foreign manufacture.

In accordance with the above finding, the invoice was returned for duty as "Empty Jute Grain Bags" at 2c. per lb. under Paragraph 365.

Enclosures are herewith returned.

Respectfully,

(Signed) CHAS. F. ALBA,
Appraiser.

Exhibit "Q."

EMPTY GRAIN-BAGS.

Mr. HENRY CHARNOCK, being sworn, testified as follows:

Q. What is your business, Mr. Charnock?

A. Importer.

Q. Have you imported grain bags?

A. Yes, for a number of years.

Q. How many years?

A. I suppose fifteen or eighteen years. Fifteen years, at least.

Q. In the course of your importations have you just sold the bales as they came through your hands, or have you had occasion to open and examine them?

A. No, sir; we sell them as they come to us, and never have occasion to open them unless in case of damage or sea damage, where they were opened to make settlement with the insurance company.

Q. Have you ever manufactured bags?

A. No. I have them manufactured here by others occasionally.

Q. Have you dealt in domestic grain bags?

A. What would you call domestic grain bags?

Q. I mean, have you dealt in bags manufactured here, outside of your importations?

A. Yes, I have had some manufactured here; I have a lot of centals here now that were manufactured here.

Q. Did you see them—the individual bags—or simply the bales?

A. Those manufactured here, I saw the individual bags.

Q. What experience have you had in the examination of bags that would enable you to distinguish between a foreign and a domestic made bag?

A. The only experience I have is: When the question came up as to what were foreign and what were domestic—the testimony that I had read and seen given. The testimony of the people in New York—this man Collins in New York (I think his name is Collins) gave testimony as to the difference in stitch; and then I have examined very largely when in Europe. I have gone to the warehouses and examined to see if we could distinguish between them, with a view of buying solely those of American manufacture—that we could prove to be of American manufacture?

Q. Did you find distinguishing marks?

A. Yes, we found distinguishing marks. Those sewed with white thread, cotton thread, we concluded to be made in America. I believe

there is a factory in California where they manufacture by the overhand stitch, as well by machinery. I am under that impression but do not state it as positive. Foreign bags are all overhand stitch as a rule, that is cental bags, but there are those that have been mixed with them, called "River Plate" bags manufactured differently, sewed with flax thread.

Q. Do they sew any American bags with flax?

A. Not that I know of.

Q. Do they sew any foreign bags with cotton thread?

A. Not that I am aware of. They use either flax or hemp or jute.

Q. Are the characteristics that you have mentioned common to all the bags of both kinds respectively?

A. No, as I stated, I understand there is a factory in San Francisco, or in California somewhere, that makes bags and that they use jute or hemp twine and sew on the same kind of machine used in Calcutta.

Q. Would there be any mark by which to distinguish between those and the Calcutta bags?

A. No, I have never seen the two to distinguish. I have heard that the evidence was given. As it is only hearsay I can not say it is so.

Q. Do you know how many bag factories there are in the United States?

A. No, I do not.

Q. I will show you the official samples of your three importations, which the examiner states consist of one foreign bags taken from each of the bales examined. Please examine them and state whether you find any of them which you consider to be of America manufacture?

A. (After looking over the samples.) Well, to the best of my knowledge, I would say that all these are of foreign manufacture. Every bag that is there, as far as I can judge. Now I would not consider these to be fair samples of the shipment because nearly all the bales have more or less American bags in them. I have seen a bale that has come out that has been simply imported bags alone.

Q. Have you any knowledge of the percentage of foreign bags there were in those bales?

A. I have not, sir.

CHARLES W. KEETING, U. S. Examiner of Customs, being sworn, testified as follows:

Q. How many bales of the three hundred and twenty covered by Mr. Charnock's three protests did you open and examine?

A. I could not state the exact number. Sometimes I would not take a sample out of a bale. Of course, I can't remember back, but I know that these samples came out of different bales. I would hardly ever take two samples out of one bale.

Q. Then these samples each represent that you consider to be a foreign bag in the bale.

A. Yes, sir.

Q. In making your examination, did you ascertain the proportion of American and foreign made bags?

A. I would make it, not perfectly exact, but in going through a bale, if I separate it, it is more difficult to get it together; but in going

through the bale when it is opened, I came at a very close estimate, and I found that when I did open the bales it corresponded with my estimate. To show you: In opening some of the bales, I found two hundred and fifty American bags out of the thousand, and in others I would not find but one hundred; so they would vary, but the average in the whole importation was pretty nearly the same. When I came to count five bales my average would be the same. The more bales I would count, the greater average would be my foreign bags. In three bales I found eighty-one per cent. and a fraction, foreign; and on five bales I had (86) eighty-six, per cent. foreign. I just want to state to you that, of course no one can be positive, but from close examination we have taken every method to try to be just about it.

Q. Did you find the percentage of American bags in Mr. Charnock's importations to be about what it was in the others?

A. Yes, there was only one I thought had a larger proportion that I remember, on the American bags.

Q. What was the proportion?

A. Well, I should judge that importation of one hundred bales to be twenty-five per cent. American.

CHAS. W. KEETING, being duly sworn, testified as follows:

Q. What is your business, Colonel?

A. United States Examiner of Customs.

Q. How long have you been engaged in that business?

A. Well, about seven or eight years altogether.

Q. Have you examined, as a rule, the grain bags imported here?

A. I have since last October.

Q. Did you examine the grain bags imported by Ranlett & Stone by the "Engineer" on August 14th, 1893, by the "Vesta" October 31st, 1893, by the "Legislator" October 3rd, 1893, "Assaye" November 11th, 1893, "Traveller" December 28th, 1893, "Pallas" January 5th, 1894; and by Henry Charnock by the "Engineer" January 16th, 1894, "Electrician" November 13th, 1893; and by James S. Richardson by the "Engineer" September 1st, 1893, and by the "Legislator" on September 9th, 1893?

A. Yes, sir. Of course, I don't remember all the exact dates, but those are the importations.

Q. Now, I will take the entry by the "Engineer," August 14th, 1893, protest No. 21861 B., and ask you to give an account of the examination you made in that case.

A. Invoice 3880 of that entry covers 300 bales.

Q. How many bales of that invoice were ordered to the public store?

A. Thirty.

Q. How many of those thirty bales did you examine?

A. Six.

Q. Have you representative samples of the six bales?

A. Yes, sir; here are the samples. I took out a sample, usually, out of every bale that I opened.

Q. How many bags are there in each bale?

A. There are supposed to be a thousand bags in each bale.

Q. How many bags did you take out and reserve as samples from each bale?

A. One from each bale I opened.

Q. Do you think one bag would be fairly representative of the character of a bale?

A. Yes, sir; I examined minutely the bale as I opened the bags, but I thought that certainly six would be enough of the invoice to show.

Q. Did you find bags of different character in a bale?

A. Yes.

Q. Did you find some of American manufacture?

A. Some few, yes sir.

Q. And some of foreign manufacture?

A. Yes, sir.

Q. Well, which would that one bag you took out represent?

A. Represent the foreign manufacture.

Q. Then it would not be a representative sample of the bags of American manufacture that were in the bale?

A. No, sir, I took out no samples of those of American manufacture.

Q. Then, would you call it a representative sample of the bags contained in that bale?

A. I would of the ———.

Q. No, I don't ask of any particular kind, but I say, of all of them?

A. Well, according to my understanding of my duties as an examiner, I should. Yes.

Q. But I understood you to say that it was a bag of only one of the kinds that was in the bale?

A. Yes; but I say I did not understand it to be my duty as an examiner that I should have anything to do with the few American bags I came across. I took the samples to show that foreign manufactures were found. I supposed if seventy-five per cent. of the bags in the bale were of foreign manufacture, it carried the whole of them. That was my idea as an examiner, and the quantity in all these importations where I opened the bags and counted I found along about 80 to 86 per cent. foreign make.

Q. Were your examinations of all these invoices covered by the entries I have named, made in relatively the same proportions? That is, here you examined six bales out of three hundred; did the examinations of the other invoices bear relatively the same proportion?

A. No, sir. Some I examined every bale of the whole entire invoice. Where there were one hundred I have examined the whole hundred bales. Some I have opened a larger percentage than of others.

Q. Now, I show you invoice No. 3881 covering 100 bales, and ask you how many of those bales were ordered to the public store?

A. Ten.

Q. And how many did you open and examine?

A. I may possibly have opened a bale and not kept a sample. Of course, it is hard for me to remember all that.

Q. And the samples you have reserved are samples of the bags you considered foreign?

A. Yes, sir.

Q. But you did not retain in any of those, I understand, samples of bags you considered to be of American manufacture?

A. No, sir.

Q. Now we will take invoice No. 3882, covering two hundred bales. How many of those bales did you open and examine?

A. There were twenty bales sent to the appraiser's store, and I took samples out of five bales.

Q. And the samples you took were of bags you considered to be foreign made bags?

A. Yes, sir.

Q. If you could say about what proportion your examination covered—

A. I will state these are the first. I increased the number afterwards, in the examination of the bales sent to the appraiser's store. You know that these bags are pressed with very severe pressure, and of course it marred the appearance and condition of the bags in opening, and I opened just as few bales as I possibly could in order to find the correct status of the bags. As soon as I found that there might be a call for more, I opened ten per cent. of the bales. These first invoices contain a less percentage opened than any of the other invoices.

Q. Now we will take up the next protest, No. 21862 B., invoice 4505, 200 bales; how many bales did you open and examine?

A. Twenty-eight bales went to the public store, and I kept samples of five.

Q. You opened and examined five bales?

A. Yes, sir.

Q. Now, I will show you invoice No. 4506 covering 125 bales and ask you how many bales you opened and examined of that lot?

A. Four. The last importation where they would send a percentage, I opened all of them.

Q. Those invoices are not before us now?

A. No, I suppose not.

Q. Now we come to protest 21863 B. I show you invoices 4202–03–04–05, covering six hundred and fifty bales, and ask you how many bales you opened and examined?

A. Eighteen out of the six hundred and fifty bales.

Q. Now, protest 21965 B, covering eight hundred and fifty bales?

A. Sixteen bales.

Q. Now, I show you invoices covered by protest 22185, for three hundred bales, and ask you how many bales you opened and examined?

A. Nine.

Q. Now, protest 22186 covering one hundred bales; I ask you the same question.

A. Ten.

Q. Did you reserve a sample from every bale you examined?

A. No, sir. I examined all that were sent here.

Q. I mean, did you reserve a sample from every bale you opened?

A. No, I didn't take a sample from every bale opened.

Q. Well, do you think you opened and examined more bales on this invoice than are represented by the samples here?

A. Oh, yes, I feel very confident of that. I feel sure I didn't take some out of each bale I opened.

Q. Did you open every bale sent to the public store?

A. No, I did not open them all.

Q. Well, could you make any positive statement as to the number?

A. No; I used my judgment to try to open sufficient to get at the classification of the goods.

Q. Can you, in your opinion, determine the classification of a bale of bags without opening it?

A. Well, yes, in the same invoice. We do that in all our departments. We don't examine all the bags,—and I don't think all are opened in any port in the country, where we are satisfied that all run about alike.

Q. Have you ever been in the bag business?

A. No, sir.

Q. How do you derive your knowledge on the subject of grain bags?

A. Well, from a study of the business, like everything else.

Q. How long have you studied it?

A. I have studied it more or less for the past number of years.

Q. How many years?

A. Well, I have given it some study for two or three years, and close study for the last few months since it has been thrown on my hands to examine them.

Q. Then your study of the question has been as an examiner?

A. Yes, sir.

Q. Do you feel that you are able to make the distinction between a bag of American manufacture and one of foreign manufacture?

A. I think so; yes, sir.

Q. What would you consider the distinguishing marks?

A. Well, the American bags are of two classes usually. We have them made up of the American jute, and then we have American bags made up of foreign jute. It is, as far as I have been able to learn, through the officers here and myself,—sent in to California, where they make these bags.

Q. Are you able to easily make a distinction between the American bag made of foreign jute and the one made of home jute—American jute.

A. The stitches in some of the bags are very much alike, but as I suppose you well know, nearly all the American bags made of foreign jute are subject to drawback, and are generally designated in that way for the drawback, whether accepted or not. Now, the foreign made bag always has the cotton selvedge in the bag. I will show you by cutting open one of these bags. And they are nearly all made with this overhand stitch—and the stitch is more irregular than the stitch of a similar kind of the American made bag.

Q. Are you speaking about foreign hand-made bags?

A. Yes.

Q. Would not the machine stitch be as regular in one as the other? That is, would not foreign machine stitch be as regular as the American machine stitch?

A. I suppose so, made on the same kind of machine.

Q. Well, do you know whether any foreign bags are made with machines or not?

A. Yes, I have seen foreign bags, made on machines.

Q. The same kind of machines?

A. Well, I couldn't say.

Q. The distinction I understand you to make is between foreign hand-made bags and American hand-made bags, but you have not drawn the distinction between foreign machine-made bags and American machine-made bags. Can you draw that distinction?

A. I have never seen an American machine-made bag made exactly like a foreign-made bag.

Q. What is the difference between the two?

A. The foreign made bag has generally a coarser stitch.

Q. The machine stitch is coarser?

A. Yes, sir, my experience is that it is.

Q. Well, how do you derive your knowledge about that? Did you know positively that the bags with this coarser stitch were foreign made?

A. In my opinion it was, but it is difficult to give an explanation.

Q. Are you at all acquainted with the manufacture of foreign bags?

A. Well, somewhat. Not very much. I am not otherwise than in the examining room.

Q. Were you ever in the bag business?

A. No, sir, I never was in the bag business.

Mr. RANLETT asks:

Q. You say that the foreign bag is always made with cotton selvedge?

A. Yes, sir; I have never seen any without.

Q. The American bag has at times the cotton selvedge?

A. Yes, sir.

Q. Then, that wouldn't be a distinction?

A. Yes, sir; I can illustrate that with samples here and prove it. We have taken the means to send to the factories and get ourselves up on it.

Q. How many factories did you send to?

A. Two in California.

Q. Those samples would represent those made by those two factories, but not necessarily by those throughout the United States?

A. Yes, sir.

Q. I would like to know if you have any positive distinguishing mark by which you can distinguish a difference?

A. Only these marks I have stated and the general appearance. I have given it pretty close study, and as you know, I have handled a great number of these bags. I suppose I have opened more bags in my capacity than were ever opened before, since New Orleans was a port of entry.

By Mr. W. (in pencil):

Q. You say that you have opened a great many bales of bags, and, have, therefore, been enabled by that experience to discriminate between the foreign and the American made bag?

A. Yes, sir.

Q. Now, I ask you what standards you went by to arrive at the determination that a bag was a foreign made bag?

A. Well, outside of the general appearance, I took the stitch and so forth.

Q. Unless you had something to go on—

A. Well, in the foreign made bag the cloth seems to be different.

Q. How did you get to know this different appearance?

A. By the custom of handling these bags, as we find out how to tell a piece of counterfeit money, by its feel and appearance.

Q. But unless you had some standards of American or foreign bags to go by—

A. I don't think they can produce an American made bag in this country like this bag (holding up bag). Not in the whole country.

Mr. STONE asked:

Can you tell the difference between the foreign and American manufacture by the cloth?

A. Not always. I say the general appearance.

Q. Is it not a fact that American bags are frequently made of foreign cloth?

A. Yes, and that is the reason we sent to California. I noticed that nearly all the bags I found with the selvedge showed that they were made of foreign material.

By Mr. WILKINSON:

I noticed your notations on this invoice are as follows: "After a careful examination of this importation, we are of opinion that foreign made bags are contained therein."

A. My reason was that I considered if there were twelve foreign made bags in the whole lot, they should pay the full duty on foreign made bags. That is my understanding; that the bale is a unit.

Q. Then, did you prepare any data as to the percentage of foreign or American bags contained in these bales?

A. Yes, sir, I estimated in counting some of the bales, and formed an opinion without opening or destroying or marring the appearance of all the bales that were sent here, and I would ask Mr. Prudhomme, the Assistant Appraiser, Mr. Alba, the Appraiser, and Mr. McEnery, the Special Agent, to judge with me on the percentage of the bags. I don't think, in my opinion, from my experience in examining, that there is in all these invoices an invoice that would show over twenty-five per cent. of American bags in the invoice.

Q. In your examination of these various lots did you take any one bale and examine every bag in that bale?

A. I did not count them out in these lots; I only ran through them.

Q. You did not examine every bag?

A. No.

Q. Have you got any data by which you can give the exact percentage of American and foreign made bags covered by the protest now being considered?

A. No, I can not give specific details for each invoice, but in general I found from seventy-five to eighty per cent.

Q. And you retained no samples of the American made bags?

A. No, sir.

Q. And then, you could not tell precisely what percentage of foreign made bags in those bales is represented by the samples now under consideration?

A. Well, this I know very near because I went through and counted the bags. Of course, I didn't separate each bag.

Mr. DAVID GLOVER, being sworn, testified as follows

Q. What is your business, Mr. Glover?

A. Bag manufacturer.

Q. How long have you been in that business?

A. In manufacturing bags? I think about four years; but I have been handling bags for these past twenty years.

Q. What kind of bags have you handled?

A. All kinds: Burlaps, and oats and corn bags, both foreign and domestic.

Q. What are the distinguishing marks between foreign and domestic bags?

A. I could not tell.

Q. What are the distinguishing features of the bag in its finished condition?

A. I could not tell that.

Q. Could you tell by looking at a bag whether it was made abroad or in this country?

A. No, sir.

Q. I suppose there are some kinds of bags that bear very prominent distinguishing features, are they not?

A. There are some sewed with tarred twine that I would think were of foreign make, but I could not swear to.

Q. Please look at that bag (handing witness bag) and tell me if you could say whether it is of foreign or American manufacture?

A. I could not tell, sir. I could not swear to it by any of them.

Q. You couldn't swear that any of them are of American manufacture; either American or foreign?

A. I could not swear to it.

Mr. RANLETT asked:

Q. Mr. Glover, you handle a good deal of burlaps at times?

A. Yes, sir.

Q. Don't burlaps come to this country, having cotton thread in the selvedge?

A. Yes, sir.

Q. Is that burlaps made up into American bags?

A. Yes, sir.

Mr. ALBA (handing bag to witness):

Will you please tell me whether this is an American made bag or a foreign made bag.

A. I could not tell. It has the appearance of an American made bag, but I would not swear to that.

Q. Will you please examine that bag and see if you find any cotton selvedge in it?

A. I don't see any cotton selvedge in that bag.

Q. Tell me what this bag is.

A. That has the appearance of an American-made bag.

Q. Has that cotton selvedge in it?

A. Yes, sir.

Q. By what do you distinguish the manufacture of it?

A. By the sewing of it in the mouth. We sew them that way here.

Q. Do you mark your bags "with privilege of drawback?"
A. No, sir, I do not.

Mr. LEONARD NAEF, called for the government, being sworn, testified as follows:

Q. What is your business, Mr. Naef?
A. Secretary of the Elevator.
Q. How long have you been there?
A. Since 1881.
Q. Does that business lead you into handling bags?
A. Yes, sir.
Q. What class of bags do you handle?
A. The bags we handle are mostly bags that are lent (loaned) to the ships, filled with grain, and as a rule, shipped back again.
Q. What kind of bags—American make or foreign, or both?
A. They are supposed to be of American make.
Q. Have you had any experience in handling foreign-made bags?
A. I have seen foreign-made bags on English ships. We fill them as well as our own.
Q. Have you become acquainted with any marks of the two kinds of bags by which you could distinguish foreign made from American?
A. Most of the American made bags are sewed with chain stitch with thread. The foreign made bag—what I consider—is sewed overhand with more or less tarred thread.
Q. They are sewed by hand?
A. (Answer) I don't know. Some of it is, and some of it must be sewed by machinery because the stiches are regular.
Q. Is there any difference between the two?
A. Yes.
Q. You say the stiches are more regular?
A. Yes, sir.
Q. What would be the difference in appearance of an American bag made of foreign jute and sewed by machinery, and a foreign bag made of the same material and sewed by machinery?
If it was sewed by the same kind of machine, I guess they are about alike.
Q. Then you could not distinguish?
A. No, sir.
Q. (Showing bag to witness) Please look at this bag covered by invoices marked "Exhibit 1," protest No. 21861, and tell me whether, in your opinion, that is a foreign or a domestic made bag?
A. I would consider it foreign made, but at the same time I would not swear to it.
Q. Why would you consider it foreign made?
A. On account of the sewing.
Q. Is it hand-sewed or machine-sewed?
A. That is machine sewing with double thread. We don't do that here, in general.
Q. Will you please look through these bags that we have just taken out and see if you find any in them that you consider of American make?
A. I could not swear to it that they were American make.

Q. Could you say whether they were foreign made or not?

A. No, I could not.

Q. Well, from the appearance of those bags, would you not judge them to be foreign?

A. I would; but could not swear to it.

Q. In your judgment, as an expert, would you class those bags as foreign or American?

A. In my judgment, I would think some of them are foreign and some of California make.

Q. Please pick out some that you consider of American make.

Recess—for Lunch.

Q. After the further examination of the bags that you have made at my request, do you find any reason to change the testimony that you gave in the first part of your examination?

A. Well, as I stated, those sacks are sewed by hand; those twenty-three; and the others are the same make we receive from California;—and as I stated before, those we receive off the ships are sewed with more or less tarred thread.

Q. In your judgment, would you state whether or not all the bags that you have examined,—which are all the samples under consideration,—are American made with the exception of twenty-three?

A. No, I could not state that. It is simply my idea, but I could not swear whether it is American or foreign made; but what we have already taken on the foreign ships as being foreign are generally sewed with tarred thread.

By Mr. ALBA:

When I showed you this bag, you told me that you could show me that this was a California bag, and you could show me a whole lot made like it. Please show me any other bags made like it. Please tell me if this bag is made like that.

A. The same machinery is not used everywhere, but I consider it a California made bag. They are all turned over that way, and as a rule, the foreign made bags are not.

Q. Will you tell me if this is a California machine-made bag (showing witness another bag)?

A. That is a hand-made bag. I don't know where it is made; It is hand-made.

Q. Well then, it is a different make?

A. Yes.

Q. Please show me those bags that you consider American bags that are made like this or like this,—"Exhibit 3." Is that a foreign made bag (showing him California made bag,—"Exhibit 4")

A. Yes, I think it is, the way it looks.

Q. Did you not say that bags made with tarred thread are foreign made?

Witness answered that he didn't look at the other side, or end, but that anybody could see it was tarred or waxed (meaning the thread).

Mr. C. F. ALBA, being sworn, testified as follows:

Q. Please give your business and so forth.

A. I am the United States Appraiser at this Port.

Q. Have you had any experience in handling bags or the manufacturing of bags?

A. No, sir.—I want to state that I wrote to California for a sample bag from each manufacture of bags in California, with the exception of the bags manufactured in the penitentiary. And those are the two bags,—Exhibits 3 and 4 are the samples sent from the only two manufacturers in California, by the Appraiser at San Francisco.

Mr. RANLETT asks:

Are those all the factories in the United States?

A. No, sir, I suppose not.

Q. Have you any other samples that you received from anywhere else in response to letters?

A. No, sir; I have written to nowhere else, because those American bags claimed to be California bags.

Q. I called on you in December, and asked you why you did not endorse the proportion of bags that you, in your opinion, found as foreign, on each invoice. Do you recollect what your reply was?

Ans. My reply was exactly the one made by Mr. Keeting; That we were of opinion that when bags of foreign origin were found among them, that it carried the whole bale.

Q. Did you not state to me that you could not ascertain that without going all through the whole bale, and that you didn't intend to do that?

A. I said we could not ascertain that unless we counted bag by bag, which is correct.

Q. And that you would not do it?

A. We could not unless authorized; unless you sent us a written order or agreement, and, of course, we would have agreed to it.

Q. There was no statement of that kind made at that time about an agreement?

A. What agreement.

Q. Agreement to open bales or anything else.

A. My recollection is that in the early part of December you wanted me to change the returns, or have put on the returns the proportion of bags found; and that could not be done as our returns had already been made.

Mr. J. W. STONE, being sworn, testified as follows:

Q. What is your business, Mr. Stone?

A. Importer and commission merchant.

Q. You deal in bags?

A. Yes, sir.

Q. How long have you dealt in them?

A. About six or seven months.

Q. Have you ever manufactured bags?

A. Never.

Q. Do you suppose that you have handled them long enough to acquire an expert knowledge?

A. No, sir.

Mr. RANLETT asks:

In the early part of December, did you call with me to see Mr. Alba?

A. Yes; about December first. I made a notation of it in a little book.

Q. Will you recite what you know of the conversation that took place with Mr. Alba in relation to the endorsement of the percentage of bags found in each bale?

A. We called on Mr. Alba, and he told us about how he was going to return the invoices. As near as I can remember at the time, he said he was going to return them that in his opinion the bales contained bags of foreign manufacture; and we asked him were all the bags of foreign manufacture, and he said no,—that about one in every four or five was American. Then we asked him would he endorse that on the invoice; endorse the percentage of American made and foreign made bags on the invoices returned,—and he said no he could not do that without going through the bales, bag by bag and counting out the percentage,—and that he could not do that and would not do that. As I remember, that was about December first, and I think the invoice was passed about the 11th, but I am not positive of that and could not say.

Mr. ALBA asks:

Is it not a fact that you have seen the returns yourself, made on the invoice? and Mr. Stone answered, Yes sir.

By Mr. ALBA:

Then, I did not tell you that I had made those returns or that I would make those returns that way.

Mr. Stone: I saw it in one case, yes.

Mr. Alba: Then I did not say I would make all my returns that way on bags to be examined, nor did I say to you that I made all my returns as containing foreign bags.

Mr. A. S. RANLETT, being sworn, testified as follows:

Q. Your business, Mr. Ranlett?

A. Commission merchant.

Q. Do you handle bags?

A. Yes, sir.

Q. Domestic as well as foreign?

A. We don't do anything, or very little, in bags that are handled here. Our business is confined principally to importing. We have been importing about 6 or 8 months.

Have you ever manufactured bags?

A. No, sir, I never have, but the old firm, twelve or fifteen years ago, did; but I have no knowledge of it.

Q. In your importations have you dealt intentionally in foreign as well as American made bags?

A. Yes, sir, but of different classes of bags. Those we import as foreign made bags are Dundee bags, used for cotton seed.

Q. What are those in controversy used for?

A. Those are used mostly by the oil mills for cotton-seed meal, and by the Levee Boards in times of overflow.

Q. It is, then, rather an inferior bag—this importation—to the Dundee bag?

A. It is a different style altogether. These are worth now about 6¼ cents, and Dundee bags are worth about 9 to 10 cents.

Q. Well, taking bags of this class and size, is there any difference between the price in the foreign market of the foreign bag and that of the American bag?

A. None that I am aware of; none whatever.

Q. Does not the American bag bring a higher price because it is entitled to free entry here?

A. I should think it would if the people on the other side could distinguish them, and separate them, and guarantee their free entry, but I don't think that is ever done, or can be done abroad. I don't think they know the difference. But there is no difference, as far as we know, in the price of bags abroad, between American made and foreign made. I will state that we are prepared to show that the prices at which we bought these bags abroad, and the prices at which we made our sales here do not justify any room for the payment of a fraction of duty. I say this to show that they were not bought abroad as foreign bags with the intention of bringing them through as American.

Q. Have you acquired sufficient expert knowledge from handling bags to distinguish between a foreign made and an American made bag?

A. Well in some cases, I can tell some American made bags I think, that are distinctively American.

Q. Could you examine these samples that are under consideration, and point out the bags of American production; that you are satisfied, as an expert, are of American production?

A. I think I could,—yes, sir,—if any of them bear those marks by which I know them to be distinctively American. If a bag is sewed up on a machine with a cotton thread, I should think it to be American. Outside of that, I don't think I could.

Q. Will you examine every sample here, and pick out those which as an expert, you would state to be of American origin?

A. I will commence by replying that I am not an expert. The only way I can tell a bag to be distinctively American is when it is sewed up on a machine with white cotton thread—and I find none of that particular kind in this lot.

Q. You are not familiar with all kinds of American bags?

A. No, sir. My experience has been limited, and we rarely see the bags, as we hardly ever think of opening a bale—up to the time this examination commenced.

Q. In your contracts that you made, Mr. Ranlett, did you specify that the bags to be delivered to you should be of American origin?

A. Well, we took an even safer step than that, you might say, although we were not aware of any trouble of this kind in view. To guard ourselves, we exacted from the shippers that they should enter this country free of duty, and they invoiced them as bags of American manufacture, and contend that they are still entitled to free entry; and the consequence is, we are still unable to collect our guarantee.

Q. In regard to the point that you have made concerning the number of bales examined, have you got any evidence to show what the number was?

A. Yes, sir. At the time of withdrawing them from the custom house we kept a record of every bale that had been opened.

Q. Have you got that record?

A. Yes, sir; I will read it out: "Engineer," six hundred bales, entry of August 14th, 1893—eighteen opened. "Legislator," six hundred and fifty bales, September 7th, 1893—nineteen bales opened. "Vesta" 325 bales, October 9th, 1893—thirteen opened. "Assaye," November 8th, 1893, 850 bales—sixteen opened. "Traveller," December 26th, 1893, 300 bales; fourteen opened. "Pallas," January 4th, 1894, 100 bales; ten opened. "Engineer," January 15th, 1894, 100 bales; ten opened.

Q. Did you ever make any request to the appraiser to examine a larger proportion of the bales?

A. We didn't know at any time how many were being examined, but when we found they were not examining all—from that on we believe they examined a larger quantity—and we at one time afterwards we sent a written communication asking to have a larger quantity examined, subsequent to the cases now under consideration.

There is also returned herewith marked Exhibit "S," a copy of the opinion of the board referred to in the decision herein as G. A. 2448.

There is also returned herewith marked Exhibit "T," a copy of the opinion referred to in the decision herein as No. 18225, et al (G. A. 2610.)

Exhibit "R."

(15070—G. A. 2623.)

GRAIN BAGS, RETURNED DOMESTIC.

Before the U. S. General Appraisers at New York, May 21, 1894.

In the matter of the protests, 21861*b*. etc., of Messrs. Ranlett & Stone et al., against the decision of the collector of customs at New Orleans as to the rate and amount of duties chargeable on certain grain bags, imported per the vessels and at the dates named in the annexed schedule.

Opinion by Sharpe, General Appraiser.

These protests cover some three and one-half millions of bags, entered at the port of New Orleans at different times between August 14, 1893, and January 15, 1894.

It appears from the papers that they are empty grain bags made of jute, of the kind commonly known as centals. They arrive in large quantities, each bale containing 1,000 bags, one of these importations comprising 850,000 bags.

They are claimed variously in the protests—

(1) To be entitled to free entry under paragraph 493, N. T., as manufactures of the United States.

(2) That the bags of foreign manufacture are entitled to free entry under paragraph 649 of the act of March 3, 1883, "which has not been canceled" by the act of October 1, 1890.

(3) That they are free under section 7 of the act of February 8, 1875, which is claimed to be unrepealed.

(4) The claim is also set up that the examination by the appraiser was not fairly and faithfully made, one of the written arguments submitted to the board urging that the examiners' estimate was "not based on facts such as could be derived only from an actual and careful count of the

packages bag by bag," and the importations to which this argument applied contained 2,925,000 bags.

The appraiser reports that one of the importers stated that the bags were sold abroad to them as being free of duty, and if found to be of foreign manufacture, they (the importers) would hold the foreign exporter. One of the papers submitted in the case also states:

These bags have been bought with the usual guaranty of free entry into this country from the parties in England, and are therefore supposed to be all bags of American manufacture.

The officers of the appraiser's department strongly assert the fairness and faithfulness of the examinations made, and a very burdensome amount of labor seems to have been done to reach a proper return. From some large invoices 10 per cent. of the bales was ordered by the collector. In some invoices of 100 bales and 150 bales, respectively, all were ordered by the collector, and from one invoice of 30 bales 4 were ordered for examination, and the 26 others were subsequently demanded and not delivered by the importer. It does not appear that from some of the invoices the full amount of 10 per cent. of the bales was ordered, but it does appear that all the merchandise covered by all the invoices was of the same character and description.

It was admitted that there were bags of foreign manufacture and American manufacture, all indiscriminately mingled together, no attempt being made on entry or afterwards to separate from these enormous totals of goods of the same class those claimed to be relieved from duty accompanied by the proof establishing such indulgence.

In a recent decision of protest 61329a, we have expressed some views in regard to the duty of importers in seeking the benefit of acts or parts of acts relieving merchandise from contribution to the revenue, and we hold similarly in the cases now before us. In a carefully prepared paper, in the nature of a brief or argument, by one of the protestants herein for the consideration of the board, at the time the oral evidence was taken, the claim is made that the documents required by regulations for the identification of the goods have been furnished, with the exception of those relating to merchandise exported by the *Viscount* from San Francisco, January 14, 1892, marked B. X. X. In regard to them, the protestants states: "These are not available, having apparently been used by others."

There are sundry other lots referred to in the brief where the absence of the identifying certificates is accounted for by the statement that they are "not available" or "not obtainable." It is also admitted in the same brief that sundry other lots are excluded from free entry by reason of their having received drawback on exportation, and these two classes admittedly excepted from the provisions for free entry cover many thousands of bags of the importations now under consideration.

These admissions add to the evidence we have *aliunde*, that not only are the so-called returned bags not seen by the foreign exporter, nor by the home importer, who both make oath regarding their manufacture, but the documentary proof of identity required by law is indiscriminately disposed of to anybody who has bags to sell and can find a purchaser in the United States. The brief or argument closes with this statement signed by the importer:

As I have not personally seen or inspected them (the bags), I am

unable to state whether they are all American manufactured or only a portion of the same. This evidence, I presume, will be furnished by the appraisers who have examined same.

The *onus probandi* of the appellants' claim is thus thrown upon the government officers, the propriety of which we can not admit.

The admissions above recited do not surprise us since in the evidence taken before us in G. A. 2448 proof was made that about thirty millions of cental bags are used for the exportation of grain from the Pacific ports, and only a small proportion of the centals thus used are of American manufacture.

The appraiser having examined all these importations and having reported the goods to be of foreign manufacture, duty was assessed by the collector on the bags under paragraph 365, N. T., at the rate of 2 cents per pound.

If this decision had been based on an insufficient examination, the importers might have asked for a re-examination, but they did not do so.

When, however, the protests came before the Board of General Appraisers on appeal, the insufficiency of, or alleged want of fairness in, the examination had no further relation to the decision of the case on the merits. The appellants were then here to prove their allegations, and they had abundant opportunity to do so. To suit their convenience, the testimony was taken at New Orleans, on notice, and all witnesses could be produced. The appellants then had their day in court, and they were there to establish affirmatively, and not by any indirect or negative testimony, the facts entitling their merchandise to free entry. The alleged inexperience of the government examiners could no longer be criticised, for the door was open for the entrance of all expert witnesses that could be produced. The testimony introduced failed to sustain the allegations of fact made in the protest and corroborated the returns of the examining officers, which we find to be true.

We hold that the provisions of the acts of March 3, 1883, and of February 8, 1875, under which alternative claims are made, are no longer in force. The facts proved and the claims made herein are in many points similar to those considered in passing upon those covered by protests 18225 et al. from San Francisco, and we refer to the views there held as applicable herein.

We find that these several protests have not been sustained, and we affirm the decisions of the collector.

(sd.) WILBUR F. LUNT,
GEORGE H. SHARPE,
Board of U. S. General Appraisers.

Schedule.

21861–B–476,	Ranlett &	Stone,	Engineer,	Oct. 10, 93.
21862–479	"	"	Vesta,	Oct. 31, 93.
21863–480	"	"	Legislator	Oct. 3, 93.
21965–481	"	"	Assaye	Nov. 11, 93.
22185–485	"	"	Traveller	Dec. 28, 93.
22186–489	"	"	Pallas	Jan. 5, 94.
22187–490	"	"	Engineer,	Jan. 17, 94.

Exhibit "S."

(G. A. 2448.)

FREE ENTRY OF FOREIGN-MADE CENTAL (GRAIN) BAGS—ACT OF FEBRUARY 8, 1875, NOT IN FORCE.

Before the U. S. General Appraisers at New York, February 3, 1894.

In the matter of the protest 55275*a* 12973, of Percy Kent, against the decision of the collector of customs at New York as to the rate and amount of duties chargeable on certain grain bags imported per St. Enoch, June 28, 1893.

Opinion by Sharpe, General Appraiser.

The protestant imported into the port of New York 75 bales of grain bags, the entry being made June 28, 1893, each bale being understood to contain 1,000 bags.

The merchandise was returned by the appraiser as empty grain bags, bearing evidence of foreign manufacture and of having been used in the transportation of American products.

On this report duty was assessed by the collector thereon at two cents per pound, under paragraph 365, there being no dispute that the bags are made of burlaps and are imported empty.

The protest claims—

(1) That the bags are entitled to free entry, under paragraph 493, as bags of American manufacture, exported filled with American products; and

(2) That if not free under said paragraph of the present act they are entitled to free entry under section 7 of the act of February 8, 1875, providing that bags other than of American manufacture, in which grain shall have been actually exported from the United States, may be returned empty to the United States free of duty under regulations of the Secretary of the Treasury. The alternative claim is reinforced by the contention that the act of February 8, 1875, is still in full force and effect, not having been repealed by any statute of the United States.

The greater part of the bags in which grain is exported from the United States leaves the country by the ports of the Pacific coast, and in the hearing before us proof was made that about 30,000,000 are used for the exportation of grain. About 5,000,000 of bags are made in California, and we have evidence to show that during the year 1892 30,000,000 of cental bags were exported from Calcutta to the Pacific ports of the United States, and about 4,000,000 to the port of New Orleans.

The number of second-hand bags, or returned cental bags, imported into the ports of the Eastern coast, New York, New Orleans, Boston, Baltimore, and Philadelphia, appears to be not less than 10,000,000 annually.

In may thus be reasonably supposed that of the bags returned empty to this country, which have been previously exported filled with grain, the greater proportion are of foreign manufacture, and, on the hearing, it was not denied that about 80 per cent. of the importation under consideration were foreign bags.

On their return to this country, the bags of foreign and American manufacture are brought in, indiscriminately mingled together in the same bale, leaving to the customs officers the tedious and laborious duty of separating them in order to establish the rights of the Government, and involving an expense perhaps equal to the duties to which the Government may be entitled.

It also appeared on the hearing that many bags on which drawback is claimed in San Francisco, as being made in this country from imported material on which duty has been paid, have a continuous black stripe, an inch wide to indicate claim for drawback, and it may be well believed that such a mark would not be omitted from merchandise entitled to a privilege over other merchandise of the same kind.

There was little conflict upon the question of fact, but on the hearing the importer's counsel relied mainly upon the argument that section 7 of the act of February 8, 1875, remains in force, and on that contention briefs were submitted for the importer and also for the collector.

It is claimed for the appellant that paragraph 493 of the act of 1890, is a substitute for paragraph 649 of the act of 1883, and that the latter act would have operated as a repeal of section 7 of the act of 1875 as effectively as the act of 1890.

It is argued that the Treasury Department, however, in 1884, in article 381 of the Regulations of that year, provided for the free entry of bags other than those of American manufacture, in which grain shall have been actually exported from the United States, and by a circular of October 20, 1890 (Synopsis 10291), the Department recognized the act of 1875 as being in force after the passage of the act of 1890.

Further recognition of section 7 of the act of 1875 by the Department, after the passage of the act of 1883, is claimed from the fact that in a document published by the Department entitled "Tariffs of 1883 and 1890 on imports into the United States," there was included in brackets with a subdivisional heading the language of the proviso to said section with a reference to the section and act.

However strong this implied construction may be, we find that later the question was distinctly presented to the Department, which on the date of August 22, 1893, (Synopsis 14281), used the following language:

Bags of foreign manufacture, exported with American products, will be subject on being returned to the United States, to the same duty as if they had not been previously imported, it being held by this Department, in accordance with an opinion rendered on the 20th ultimo by the Attorney-General, that section 7 of the act of February 8, 1875, which provided for the free entry of such returned foreign bags, is repealed by the act of October 1, 1890.

The appellants relied upon the case of Russell vs. Worthington (23 Fed. Rep. 248), where in March, 1885, or after the passage of act of 1883, a proviso to section 4 of the act of 1875 was held to be in force. But an examination of this case shows that the proviso was considered by the court with reference to an existing treaty, and not otherwise, and the proviso was held to be in force by reason of the treaty.

We hold, in accordance with previous opinions of the board, and with the language of the court in the case of Straus and others (46 Fed. Rep., 522), that the act of 1890 is a substitute for all prior tariff legislation,

so far as it lays a duty upon imported articles, and that paragraphs 365 and 493 cover all merchandise of the description under consideration that may be imported into the United States since the passage of the act.

We find as facts.

(1) That the bags had been used in the exportation of American grain, and were imported after such use as second hand bags, being for the most part known as cental bags.

(2) That such second-hand bags, or cental bags, are made in very large quantities in foreign countries, and to a comparatively limited extent within the United States.

(3) That two bales, taken and agreed upon as representative bales, having been carefully examined bag by bag, were found to contain, out of the 2,000 bags, 1,613 of foreign manufacture and 387 of American manufacture.

As a result of the foregoing holding and findings, we affirm the action of the collector upon such bags as are of foreign manufacture, and we sustain the protest on such as are of American manufacture, and we authorize a reliquidation upon the classification of all the bales of the importation according to the proportions of foreign and American bags found in the 2 bales referred to.

Exhibit "T."

(G. A. 2610.)

FREE ENTRY OF RETURNED AMERICAN GRAIN BAGS.

Before the U. S. General Appraisers at New York, May 2, 1894.

In the matter of the protest, 18,225–8 *b*, of Balfour, Guthrie & Co., and Calton, Bell & Co., against the decision of the collector of customs at San Francisco, Cal., as to the rate and amount of duties chargeable on certain grain bags, American manufacture, imported per *British Isles*, March 15, 1892; *Manx King*, July 26, 1892; and *Easteroft*, August 23 and 24, 1892.

Opinion by Sharpe, General Appraiser.

These protests cover four importations at San Francisco of bags made of burlaps, which had been exported filled with American products, and are returned empty. They are partly of American and partly of foreign manufacture. They are claimed to be of American manufacture and entitled to free entry under paragraph 493 of the present tariff; and the contention is also made that bags in which grain shall have been actually exported from the United States are entitled to be returned empty to the United States free of duty under regulations prescribed by the Secretary of the Treasury, under section 7 of the act of February 8, 1875. The provisions of this section apply to bags other than of American manufacture.

There is a further claim in the protests, that the U. S. Appraiser did not diligently and faithfully examine and inspect such packages as were designated by the collector. This allegation is specifically denied by the

appraiser, who reports circumstantially some of the methods of his examination and the acquiescence of the importer's representatives in the results reached.

No re-examination having been asked of or ordered by the collector, we must decline to allow any force in this claim.

In a case recently before us, arising in New York on a protest of Percy Kent (55275 *a*), the claim was made, as in this case, that foreign-made bags are entitled to free entry when returned to the United States, after being used for the exportation of grain, for the reason that Section 7 of the Act of February 8, 1875, is unrepealed. We there held the contrary of this contention, and we so hold in this case.

In the examination of the merchandise covered by invoice 3232, by the ship *British Isles*, it was found that the invoice had stated that 21,690 of the bags had been exported by the British ship *Aeolus*. This was a principal step to the identification of the bags; proof of which is required under the law and regulations. The examination showed that the 50 bales under consideration had all been exported by the *Crown of Denmark*, and none by the *Aeolus*. The identification, therefore, utterly failed, and not only was no attempt made to supply the failure, but the appraiser reported that upon this failure being made known to the protestants they notified the appraiser's department of their intention to pay duty on the importation, and the examination thereupon ceased. When the examination of the merchandise covered by the other invoices was reached, the appraiser reported that the protestants admitted that the bags were not all of American manufacture, and that they would be unable to prove them not to be foreign made. Several experts in San Francisco testified from the examination made that the percentage of foreign-made bags was very largely in excess of those of American manufacture, and the bags appear to have been indiscriminately mingled together, without any attempt on the part of the importer to separate them or to designate those claimed to be free.

Under these circumstances duty was assessed upon the entirety of the importation.

The customs officers claimed authority for such decision under a direction given by the Treasury Department (Synopsis 10,098), in July, 1890, where, upon a proposed importation of mixed cargoes of anthracite and bituminous coal in such a mingled condition as to render it impracticable to separate the free from the dutiable coal for the purpose of the accurate weighing of each kind, the collector was instructed that the whole cargo should be treated as bituminous and assessed for duty.

We also find that December 28, 1868, an importation was made into the port of Rochester of sundry bales of rags, as containing rags for the manufacture of paper, it being found that the bales contained not less than 40 per cent. of woolen rags. The law imposed a duty of 12 cents per pound on woolen rags, and admitted free such as were composed of cotton and linen and were intended for the manufacture of paper.

On this state of facts, the honorable Secretary of the Treasury instructed the collector as follows:

If you are satisfied that there was no intention on the part of the importers to conceal the dutiable rags by mingling them with others free of

duty, you will not hold them for condemnation, but will allow the parties to separate such as are dutiable from such as are not so, and make entry accordingly.

These instructions of the Department are in harmony with the determination of the law-making power upon cognate subjects, as by section 2912 of the Revised Statutes Congress enacted as follows:

When wool of different qualities is imported in the same bale, bag, or package, it shall be appraised by the appraiser, to determine the rate of duty to which it shall be subjected, at the average aggregate value of the contents of the bale, bag, or package; and when bales of different qualities are embraced in the same invoice at the same prices whereby the average price shall be reduced more than ten per centum below the value of the bale of the best quality, the value of the whole shall be appraised according to the value of the bale of the best quality; and no bale, bag, or package shall be liable to a less rate of duty in consequence of being invoiced with wool of lower value.

Section 2910, R. S., also provides:

When merchandise of the same material or description, but of different values, is invoiced at an average price, and not otherwise provided for, the duty shall be assessed upon the whole invoice at the rate to which the highest valued goods in such invoice are subject.

Bags made of burlaps are dutiable, except such as are described in paragraph 493, and we hold it to be the duty of all persons bringing in goods claimed to be free, out of a class otherwise dutiable, to prove affirmatively the facts which constitute the exemption. We hold that they should separate and designate such merchandise accompanied by the evidence required by law, and we decide that in these cases the protestants failed to meet the requirements of law and regulations:

The decision of the collector in each case is affirmed.

And for a certified statement of the facts involved in said matter, as ascertained by them, the said Board states that said facts are fully set forth in the decision aforementioned, and that no other facts were ascertained by said Board than such as are shown by said decision and other Exhibits hereto attached.

Board of U. S. General Appraisers.

(Signed) H. M. Somerville.
(Signed) George H. Sharpe.
(Signed) Charles H. Hane.

Motion and Order Fixing Cause.

Extract from the Minutes, November Term, 1894.

New Orleans, *Wednesday, December 12, 1894.*

Court met pursuant to adjournment.
Present: Hon. Charles Parlange, District Judge.
In re Ranlett & Stone No. 12,313.
On motion of F. B. Earhart, U. S. Atty,
It is ordered that this cause be fixed for January 7, 1895.

Order—Continuance of Cause.

Extract from the minutes.

MONDAY, *January 7, 1895.*

IN RE STONE & RANLETT
vs.
BOARD OF GENERAL APPRAISERS. } No. 12,313.

On motion of counsel for both parties herein,
It is ordered that this cause be continued to Monday, January 21, 1895, at 11 A. M.

Motion to Strike Out and Disregard so Much of the Evidence and Decision of the Board of Appraisers Applicable to Other Cases.

Filed January 21, 1895.

United States Circuit Court. No. 12,313.

IN RE RANLETT & STONE
vs.
THE BOARD OF GENERAL APPRAISERS.

On motion of Thomas J. Semmes of Counsel for the importers, Ranlett & Stone and on suggesting to the court that in the decision and report of the General Board of Appraisers reference is made to other cases of other importers and to the evidence adduced in such other cases, the importations involved in this case covering 2,925,000 bags and the other cases covering 575,000 bags.

It is ordered that so much of the evidence given in other cases and so much of the said decision and report as relate to such other cases be stricken out and disregarded in the consideration of this case and for the purpose of more particularly describing the facts of said decision and report having no reference to this case the said Ranlett & Stone now file with this motion a copy of said decision and report and mark with ink on the margin in brackets such parts of said decision and report as are not applicable to this case but have reference to other cases in which said Ranlett & Stone have no interest whatever.

And the said Ranlett & Stone move to suppress all the oral testimony returned into court by the General Appraisers except that taken in this case a copy of which was filed in this Court with their petition on June 1, 1894, and is described "as examination of witnesses before General Appraiser J. B. Wilkinson at the Customhouse in New Orleans on 27 March, 1894.

Copy of the Decision of the Board of Appraisers—Annexed to Motion of Ranlett & Stone to strike out certain parts thereof indicated by brackets in ink.

No. pages 6.
Typewritten by C.
Compared by S.

For Publication.

In the matter of the protest 21,861–B, &c., of MESSRS. RANLETT & STONE, ET AL., against the decision of the Collector of Customs, at New Orleans, as to the rate and amount of duties chargeable on certain GRAIN BAGS, imported per the vessels and at the dates named in the annexed schedule.	Before the U. S. General Appraisers at New York, May 21, 1894.

Opinion by SHARPE, G. A.

These protests cover some three and one-half millions of bags entered at the port of New Orleans at different times between August 14, 1893, and January 15, 1894.

It appears from the papers that they are empty grain bags made of jute, of the kind commonly known as Centals.

They arrive in large quantities, each bale containing 1000 bags, one of these importations comprising 850,000 bags.

They are claimed variously in the protests, (1) To be entitled to free entry under paragraph 493 N. T. as manufactures of the United States. (2) That the bags of foreign manufacture are entitled to free entry under paragraph 649 of the Act of March 3, 1886, "which has not been canceled" by the act of October 1, 1890. (3) That they are free under Section 7 of the Act of February 8, 1875, which is claimed to be unrepealed.

(4). The claim is also set up that the examination by the appraiser was not fairly and faithfully made, one of the written arguments submitted to the board urging that the examiner's estimate was "not based on facts such as could be derived only from an actual and careful count of the packages bag by bag," and the importations to which this argument applied, contained 2,925,000 bags.

Page 2.

The appraiser reports that one of the importers stated that the bags were sold abroad to them as being free of duty, and if found to be of foreign manufacture, they, (the importers) would hold the foreign importer. One of the papers submitted in the case also states "These bags have been bought with the usual guarantee of free entry into this country from the parties in England, and are therefore supposed to be all bags of American manufacture."

The officers of the Appraisers' Department strongly assert the fairness and faithfulness of the examinations made and a very burdensome amount of labor seems to have been done to reach a proper return. From some large invoices 10 per cent. of the bales was ordered by the collector; in some invoices of 100 bales and 150 bales respectively, all were ordered by the collector and from one invoice of 30 bales four were ordered for examination, and the twenty-six others were subsequently demanded, and not delivered by the importer. It does not appear that from some of the invoices the full amount of 10 per cent. of the bales was ordered, but it does appear that all the merchandise covered by all the invoices was of the same character and description.

It was admitted that there were bags of foreign manufacture and American manufacture all indiscriminately mingled together, no attempt being made on entry or afterwards to separate from these enormous totals of goods of the same class those claimed to be relieved from duty accompanied by the proof establishing such indulgence.

In a recent decision of Protest 61,329-A, we have expressed some views in regard to the duty of importers in seeking the benefit of acts or parts of acts relieving merchandise from contribution to revenue, and we

Page 3.

hold similarly in the cases now before us.

In a carefully prepared paper in the nature of a brief or argument by one of the protestants herein for the consideration of the board, at the time the oral evidence was taken, the claim is made that the documents required by regulations for the identification of the goods have been furnished, with the exception of those relating to merchandise exported by the Viscount from San Francisco, January 14, 1892, marked B. X. X. In regard to them the protestant states: "These are not available, having apparently been used by others."

There are sundry other lots referred to in the brief where the absence of the identifying certificates is accounted for by the statement that they are "not available" or "not obtainable." It is also admitted in the same brief that sundry other lots are excluded from free entry by reason of their having received drawback on exportation; and these two classes admittedly excepted from the provisions for free entry cover many thousands of bags of the importations now under consideration.

These admissions add to the evidence we have *aliunde* that not only are the so-called returned bags not seen by the foreign exporter, nor by the home importer, who both make oath regarding their manufacture, but the documentary proof of identity required by law is indiscriminately disposed of to anybody who has bags to sell, and can find a purchaser in the United States. The brief or argument closes with this statement signed by the importer "as I have not personally seen or inspected them (the bags) I am unable to state whether they all are American manufactured or only a portion of the same. This evidence I presume will be furnished by the Appraisers who have examined same." The *onus probandi* of the appellant's claim is thus thrown upon the Government offi-

Page 4.

cers the propriety of which we can not admit.

The admissions above recited do not surprise us since in the evidence taken before us in G. A. 2448 proof was made that about thirty millions of cental bags are used for the exportation of grain from the Pacific ports, and only a small proportion of the centals thus used are of American manufacture.

The appraiser having examined all these importations and having reported the goods to be of foreign manufacture, duty was assessed by the Collector on the bags under paragraph 365 N. T. at the rate of 2 cents per pound.

If this decision had been based on an insufficient examination the importers might have asked for a re-examination, but they did not do so.

When however the protests came before the Board of General Appraisers on appeal the insufficiency of, or alleged want of fairness in

the examination had no futher relation to the decision of the case on the merits. The appellants were then here to prove their allegations and they had abundant opportunity to do so. To suit their convenience the testimony was taken at New Orleans, on notice, and all witnesses could be produced. The appellants then had their day in court, and they were there to establish affirmatively and not by any indirect or negative testimony, the facts entitling their merchandise to free entry. The alleged inexperience of the government examiners could no longer be criticised, for the door was open for the entrance of all expert witnesses that could be produced. The testimony introduced failed to sustain the allegations of fact made in the protest and corroborated the returns of the examining officers which we find to be true.
Page 5.

We hold that the provisions of the acts of March 3, 1883 and of February 8th, 1875, under which alternative claims are made are no longer in force. The facts proved and the claims made herein are in many points similar to those considered in passing upon those covered by protests 18225 et al. from San Francisco, and we refer to the views there held as applicable herein.

We find that these several protests have not been sustained, and we affirm the decisions of the Collector.

(Signed) WILBUR F. LUNT,
(Signed) GEORGE H. SHARPE,
Board of U. S. General Appraisers.

37 Enclosures.

Pro. red'd w. Col's Letters of Jan. 6, 18, Feb. 16, 94. Encls. s. herewith.

Copy of Oral testimony filed with Petition on June 1, 1894, and described as "Examination of witnesses before General Appraiser J. B. Wilkinson at the Customhouse in New Orleans, on 27 March, 1894," referred to in motion to suppress certain evidence at page 91 of this transcript: see also Note at page 27.

The said testimony being comparatively the same as that which appears from page 54 to page 76, inclusive, of this transcript.

Hearing and Submission of Motion to Suppress Certain Evidence.

Extract from the Minutes, November Term, 1894.

NEW ORLEANS, *Monday, January 21, 1895.*

Court met, pursuant to adjournment:
Present, Hon. Charles Parlange, District Judge.

IN RE STONE & RANLETT
vs.
BOARD OF GENERAL APPRAISERS. } No. 12,313.

In this cause, T. J. Semmes, attorney for the petitioners, this day presented a motion to suppress certain evidence in the record, as set out in the motion.

The United States Attorney on behalf of defendants objected to the granting of the motion, and after hearing argument of counsel, the Court took the motion under consideration.

Hearing and Submission of Cause.

Extract from the Minutes, Monday, January 21, 1895.

IN RE STONE & RANLETT
vs.
BOARD OF GENERAL APPRAISERS. } No. 12,313.

This cause came on this day to be heard upon the petition, answer and evidence, and testimony taken.

T. J. Semmes appearing for the petitioners.

F. B. Earhart, U. S. Attorney for the defendants and was argued by counsel, for the parties respectively, and submitted—when the court took time to consider—counsel to file briefs.

Decree Unsigned.

Extract from the Minutes, November Term, 1895.

NEW ORLEANS, *Friday, December 20th, 1895.*

Court met pursuant to adjournment.

Present, Hon. Charles Parlange, District Judge.

IN RE RANLETT & STONE
vs.
THE BOARD OF GENERAL APPRAISERS. } No. 12,313.

The court allows the motion of counsel for Ranlett & Stone to suppress the evidence taken in other cases, that is to say, the testimony of Henry Charnock and also the testimony of Charles W. Keeting on pages 5, 6 and 7, of Exhibit 2, filed in court as part of the return of the Board of Appraisers.

The court also allows the motion to suppress statements in the decision of the Board of Appraisers referring to matters in other cases than of Ranlett & Stone, to-wit: the following clause: "From one invoice of 30 bales four were ordered for examination and the twenty-six others were subsequently demanded and not delivered by the importer."

Also the following clause:

"It was admitted that there were some bags of foreign manufacture and American manufacture all indiscriminately mixed together, no attempt being made on entry or afterwards to separate from these enormous totals of goods of the same class those claimed to be relieved from duty accompanied by the proof establishing such indulgence."

Also all that part of the decision commencing with the words "in a carefully prepared paper in the nature of a brief by one of the protestants herein, etc." down to and including the following words: "and only a small proportion of the Centals thus used are of American manufacture." and it is ordered that all said testimony referred to in the said motion be suppressed as well as the statements aforesaid in said decision.

The court doth further order, adjudge and decree that the duties paid by the importers, Ranlett & Stone, on the two million nine hundred and

twenty-five thousand bags imported by them in the years, 1893 and 1894 and referred to in the decision of the Board of General Appraisers, rendered 21st May, 1894, and enumerated in the documents annexed to that decision, be refunded and paid to petitioners, Ranlett & Stone, to-wit: Two cents per pound on 600 bales of empty grain bags, entered per "Engineer," August 14th, 1893; 650 bales of same, entered September 7th, 1893, per "Legislator;" 325 bales of same, per "Vesta," entered October 19th, 1893; 850 bales of same, entered November 8th, 1893, per "Assaye;" 300 bales of same, entered December 6th, 1893, per "Traveller;" 100 bales of same, entered January 4th, 1894, per "Pallas," and 100 bales of same, entered January 15th, 1894, per "Engineer," and the court doth declare that the examination heretofore made of said bales of bags is void and not in conformity to law or the regulations of the Treasury Department, and any liquidation of duties based on said examination is illegal and void, and the liquidation of duties heretofore made be made aside, and the money received from Ranlett & Stone as duties be refunded as aforesaid, and the court doth further order and decree that the Collector direct a re-examination of said bales of bags to be made according to law, and on such re-examination to reliquidate the duties which may be lawfully due thereon.

Bill of Exceptions No. 2.

Filed December 28, 1895, as of date December 20, 1895, *nunc pro tunc.*

United States Circuit Court, Eastern District of Louisiana.

In re Ranlett & Stone	
vs.	No. 12,313.
Board of General Appraisers.	

Be it remembered that on the 21st day of January, A. D. 1895, orebef said court the motion filed on said day by plaintiffs to strike out and disregard certain evidence and certain statements in the decision of the General Board of Appraisers, all of which will more fully appear in said motion to strike made part hereof, and which said motion was taken under advisement by the court, and on which said motion this honorable court in the final decree rendered herein and signed on the 20th day of December, A. D. 1895, allowed the said motion herein of said Ranlett and Stone, as set forth and stated in said decree hereto annexed and made part hereof as if fully written and recited herein, together with the original excerpts from the Record herein of said matter so stricken by said decree also hereto made part hereof as fully as if the same had been and were fully recited herein.

Whereupon F. B. Earhart, United States Attorney, on said 20th day of December, A. D. 1895, excepted to said rulings in said decree, and reserves this his bill of exceptions and now presents the same to the court for signature.

(Signed) Charles Parlange,
U. S. Judge.

Motion to Strike Out, etc., filed January 21, 1895.

Referred to and made part of Bill of Exceptions No. 2.
Copied at page 90 of this Transcript.
Decree rendered and signed on the 20th day of December, 1895, on motion to suppress, etc., referred to and made part of Bill of Exceptions No. 2, copied at page 102 of this Transcript.

Decree—Signed.

Entered and filed December 20, 1895.

U. S. Circuit Court.

IN RE RANLETT & STONE
vs.
THE BOARD OF GENERAL APPRAISERS. } No. 12,303.

The Court allows the motion of Counsel for Ranlett & Stone to suppress the evidence taken in other cases, that is to say, the testimony of Henry Charnock and also the testimony of Charles W. Keeting on pages 5, 6, and 7 of Exhibit 2 filed in Court as part of the return of the Board of Appraisers.

The Court also allows the motion to suppress statements in the decision of the Board of Appraisers referring to matters in other cases than that of Ranlett & Stone, to-wit: the following clause:

"From one invoice of 30 bales four were ordered for examination and the twenty-six others were subsequently demanded and not delivered by the importer."

Also the following clause:

"It was admitted that there were some bags of foreign manufacture and American manufacture all indiscriminately mixed together, no attempt being made on entry or afterwards to separate from these enormous totals of goods of the same class those claimed to be relieved from duty accompanied by the proof establishing such indulgence."

Also all that part of the decision commencing with the words "In a carefully prepared paper in the nature of a brief by one of the protestants herein, etc." down to and including the following words: "and only a small proportion of the Centals thus used are of American manufacture," and it is ordered that all said testimony referred to in the said motion be suppressed as well as the statements aforesaid in said decision.

The court doth further order, adjudge and decree that the duties paid by the importers, Ranlett & Stone, on the 2,925,000 bags imported by them in the years 1893 and 1894 and referred to in the decision of the Board of General Appraisers rendered 21st May, 1894, and enumerated in the documents annexed to that decision be refunded and paid to petitioners, Ranlett & Stone, to-wit: two cents per pound on 600 bales of empty grain bags entered per "Engineer" August 14, 1893, 650 bales of same entered Sept. 7, 1893, per "Legislature," 325 bales of same per "Vesta" entered October 19, 1893, 850 bales of same entered November 8, 1893, per "Assaye," 300 bales of same entered December 6, 1893, per "Traveller" 100 bales of same entered Jan. 4, 1894, per "Pallas"

and 100 bales of same entered Jan. 15, 1894, per "Engineer" and the court doth declare that the examination heretofore made of said bales of bags is void and not in conformity to law or the regulations of the Treasury Department, and any liquidation of duties based on said examination is illegal and void, and the liquidation of duties heretofore made be set aside, and the money received from Ranlett & Stone as duties be refunded as aforesaid, and the Court doth further order and decree that the collector direct a re-examination of said bales of bags to be made according to law and on such re-examination to reliquidate the duties which may be lawfully due thereon.

New Orleans, December 20, 1895.

(Signed) CHARLES PARLANGE,
U. S. Judge.

Motion and Order of Appeal and Assignment of Errors.

Filed December 28, 1895.

United States Circuit Court. Eastern District of Louisiana.

IN RE RANLETT & STONE
vs.
BOARD OF GENERAL APPRAISERS. } No. 12,313.

And now at the same term and on motion in open court of F. B. Earhart, United States Attorney for the Eastern District of Louisiana, suggesting errors in the final decree rendered herein in favor of Ranlett & Stone, plaintiffs in the above entitled and numbered cause on the eighteenth day of December A. D. 1895, and signed on the twentieth day of December A. D. 1895, as will more fully appear by the Assignment of Errors hereto attached and made part hereof and filed herewith.

That the United States is aggrieved therein. It is therefore ordered that an appeal in this cause and from the whole of said decree be and the same is hereby granted the mover, according to law, to the United States Circuit Court of Appeals for the Fifth Circuit of the United States, returnable within thirty days from date, with citation according to law, and that the same operate as supersedeas.

Allowed and signed in open court December 28, A. D. 1895.

(Signed) CHARLES PARLANGE, *Judge.*

United States Circuit Court, Eastern District of Louisiana.

IN RE RANLETT & STONE
vs.
BOARD OF GENERAL APPRAISERS. } No. 12,313.

Assignment of Errors.

And now comes F. B. Earhart, United States Attorney for the Eastern District of Louisiana, praying for an appeal herein in said cause, and assigns the following errors in the final decree rendered herein on the 18th day of December, A. D. 1895, and signed on the 20th day of December, A. D. 1895.

FIRST.

That the court erred in not rescinding the order of this Honorable Court of June 1st, 1894, to the General Board of Appraisers to make return of the matter involved herein as more fully stated in said motion to rescind, and filed July 2d, 1895, and that there is error in said order overruling said motion to rescind, said order being dated, entered and filed July 3d, 1894. Bill of exceptions No. 1.

SECOND.

That the court erred in allowing in its decree of December 20th, 1895, the motion of Ranlett & Stone to strike out on their motion filed January 21st, 1895, all the matter stated in said decree and which is more fully recited in the Bill of Exceptions No. 2, and made part hereof, together with the excerpts of the matter so striken from the record herein filed; said excerpts made part hereof for greater certainty as if the same were fully recited herein.

THIRD.

That the court erred in its decree in which it is adjudged that the "duties by the importers, Ranlett & Stone, on the two million nine hundred and twenty-five thousand bags imported by them in the years 1893 and 1894 and referred to in the decision of the Board of General Appraisers rendered 21st May, 1894, and enumerated in the documents annexed to that decision, be refunded and paid to petitioners, Ranlett & Stone, to-wit: two cents per pound on 600 bales of empty grain bags entered per 'Engineer' August 14th, 1893, 650 bales of same entered Sept. 7th, 1893, per 'Legislator,' 325 bales of same per 'Vesta' entered October 19th, 1893, 850 bales of same entered November 8th, 1893, per 'Assaye,' 300 bales of same entered December 6th, 1893, per 'Traveller,' 100 bales of same entered Jany. 4th, 1894, per 'Pallas' and 100 bales of same entered Jany. 15th, 1804, per 'Engineer.'"

FOURTH.

That the court erred in its decree by which it is adjudged, to-wit: "The court doth declare that the examination heretofore made of said bales of bags is void and not in conformity to law or the regulations of the Treasury Department, and any liquidation of duties based on said examination is illegal and void and the liquidation of duties heretofore made be set aside and the money received from Ranlett & Stone as duties to be refunded as aforesaid."

FIFTH.

The court erred in its decree in which it is adjudged that the examination of the said bales and bags were not made in accordance with law.

And for these and other errors apparent on the face of the record the appellants pray that the decree appealed from be reversed and for all costs and general relief.

(Signed) F. B. EARHART,
United States Attorney.

In open court, December, 1895.

The United States of America, Fifth Judicial Circuit.

The President of the United States. To Albert S. Ranlett and Joseph W. Stone, of the City of New Orleans, State of Louisiana, composing the members of the firm of Ranlett and Stone, of the said city of New Orleans, Greeting:

You are hereby cited and admonished to be and appear before the United States Circuit Court of Appeals, for the Fifth Circuit at New Orleans, La., within thirty days from the date hereof, pursuant to a motion and order of appeal sued out and filed in the clerk's office of the Circuit Court of the United States for the Eastern District of Louisiana in the cause wherein and in which Ranlett & Stone are plaintiffs and petitioners for review of the decision of the General Board of Appraisers of the United States vs. Said General Board of Appraisers, No. 12,313 of the docket of the said Circuit Court of the United States to show cause, if any there be, why the said judgment rendered against the said General Board of Appraisers and the United States of America, as in said motion of appeal and the order thereon mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness the honorable Charles Parlange, judge of said Circuit Court of the United States, for the Eastern District of Louisiana, this 28th day of December in the year of our Lord one thousand eight hundred and ninety-five.

(SEAL)

CHARLES PARLANGE, *Judge.*

(Endorsed:) No. 12,313. In re Ranlett & Stone vs. General Board of Appraisers, etc. Citation No. , U. S. Circuit Court, Eastern District of Louisiana, New Orleans Division. Filed December 30, 1895. E. R. Hunt, Clerk.

Marshal's Return.

Received by U. S. Marshal, New Orleans, La., December 28, 1895.

On this 30th day of December, 1895, before the undersigned authority, personally came and appeared John B. Rivarde, deputy U. S. marshal for the Eastern District of Louisiana, who being duly sworn deposes and says that he served copy hereof on Albert S. Ranlett and Joseph W. Stone, by handing same to Albert S. Ranlett, in person, in the city of New Orleans, La., on the 28th day of December, 1895.

JOHN B. RIVARDE.

Sworn to and subscribed before me on this 30th day of December, 1895.

E. R. HUNT, *Clerk.*

United States of America, Circuit Court of the United States, Fifth Circuit and Eastern District of Louisiana.

Clerk's office:

I, Edward R. Hunt, Clerk of the Circuit Court of the United States, for the Fifth Circuit and Eastern District of Louisiana, do hereby certify,

that the foregoing 107 pages contain and form a full, complete, true and perfect transcript of the record and proceedings had, together withall the evidence adduced on the trial of the case of in the matter of Ranlett & Stone vs. The Board of United States General Appraisers, No. 12,313 of the docket of the said court.

Witness my hand and the seal of said court, at the city of New Orleans, this 31 day of January, A. D. 1896.

(SEAL) E. R. HUNT, *Clerk.*

I, Charles Parlange, United States Judge for the Eastern District of Louisiana, do certify, that Edward R. Hunt, whose name is signed to the above certificate as Clerk of the Circuit Court of the United States for the Fifth Circuit and Eastern District of Louisiana, was, at the time of signing said certificate, and is now the clerk of said court: That said certificate is in due form of law, and that full faith and credit are due to his official attestations as such clerk.

Given under my hand, at the city of New Orleans, in said district this 31 day of January, A. D. 1896.

CHARLES PARLANGE, *Judge.*

60 UNITED STATES OF AMERICA, ss:

The President of the United States of America to the honorable the judges of the United States circuit court of appeals for the fifth circuit, greeting:

Being informed that there is now pending before you a suit in which The United States is appellant and Ranlett & Stone are appellees, which suit was removed into the said circuit court of appeals by virtue of an appeal from the circuit court of the United States for the eastern district of Louisiana, and we, being willing for certain reasons that the said cause and the record and proceedings therein should be certified by the said circuit court of appeals and removed into the Supreme Court
61 of the United States, do hereby command you that you send without delay to the said Supreme Court, as aforesaid, the record and proceedings in said cause, so that the said Supreme Court may act thereon as of right and according to law ought to be done.

Witness the honorable Melville W. Fuller, Chief Justice of the United States, the 26th day of April, in the year of our Lord one thousand eight hundred and ninety-eight.

JAMES H. MCKENNEY,
Clerk of the Supreme Court of the United States.

62 (Indorsed:) Supreme Court of the United States, No. 218, October term, 1897. The United States vs. Ranlett & Stone. Writ of certiorari.

63 In the Supreme Court of the United States, October term, 1897.

THE UNITED STATES, APPELLANT,
vs.
RANLETT & STONE.
} No. 218.

STIPULATION.

It is hereby stipulated by counsel for the parties to the above-entitled cause that the printed copy of the record of said cause in the circuit court of appeals for the fifth circuit transmitted by the clerk with the certification of questions by said court to the Supreme Court of the United States, and now on file in the office of the clerk of the Supreme Court, may be taken as the return of the clerk of said circuit court of appeals to the writ of certiorari issued therein.

J. K. RICHARDS,
Solicitor-General.
WM. A. MAURY,
Counsel for Respondents.

I hereby certify that the foregoing is a true and perfect copy of the stipulation filed in the above-mentioned cause this June 13, 1898.

[SEAL.] J. M. MCKEE,
Clerk U. S. Circuit Court for the Fifth Circuit.

64 *To the honorable the Supreme Court of the United States:*

The record and all the proceedings in the case whereof mention is within made having been lately certified and filed in the office of the clerk of the Supreme Court of the United States, a certified copy of the stipulation of counsel is hereto annexed, and, under the direction of counsel for the appellant, said stipulation is certified as a return to the writ of certiorari issued therein.

New Orleans, La., June , 1898.

[SEAL.] J. M. McKEE,
Clerk of the U. S. Circuit Court of Appeals for the Fifth Circuit.

65 (Indorsed:) Case No., 16363. Supreme Court U. S. October term, 1897. Term No., 20. The United States, appellant, vs. Ranlett & Stone. Writ of certiorari and return. Office Supreme Court U. S. Filed Jun' 17, 1898. James H. McKenney, clerk.

No. 584. 2nd. 20.

Motion papers for Appt.

Filed Dec. 21, 1896

Office Supreme Court, U. S.
FILED.
DEC 21 1896
JAMES H. McKENNEY,
CLERK.

In the Supreme Court of the United States.

OCTOBER TERM, 1896.

THE UNITED STATES, APPELLANT,
v.
RANLETT & STONE.
No. 584.

MOTION TO ADVANCE.

In the Supreme Court of the United States.

OCTOBER TERM, 1896.

THE UNITED STATES, APPELLANT,
v.
RANLETT & STONE.
No. 584.

MOTION TO ADVANCE.

Comes now the Solicitor-General, on behalf of the United States in the above-entitled cause, at the request of counsel for the appellees, and moves the court to advance the case on the docket for hearing on a day convenient to the court during the present term.

The case is certified here by the circuit court of appeals for the fifth circuit. It arose upon several importations from Liverpool at the port of New Orleans of grain bags made of jute amounting in the aggregate to 2,925,000. These bags were entered as bags of American manufacture, which had been exported from the United States filled with grain, and, it was claimed, were entitled to free entry under paragraph 493 of the free list of the *Act of October 1, 1890* (26 Stat., 603).

The Board of General Appraisers, affirming the collector's action, held that the presence of any foreign-made bags in a bale or package of bags rendered the whole bale dutiable, and that the collector was right in assessing duty on all the bales in which the importations were contained.

This ruling was reversed by the circuit court, and thereupon the Government appealed to the circuit court of appeals, which certifies the following questions to this court:

> First. Whether the returns of the appraiser that the several importations of Ranlett & Stone contained bags of foreign manufacture based on an examination not in conformity with law or the regulations of the Treasury Department had the effect of overthrowing the prima facie case made by the importers who were without fraud in the premises and who had furnished all the proofs required by the customs regulations, to show that their importations were of bags free of duty?
>
> Second. Whether the presence of some bags of foreign manufacture in a bale imported as composed of American-made bags free of duty subjects to duty all the bags in the bale by virtue of the unit rule established by section 2910 of the Revised Statutes or by the general rules of law applicable to the case?
>
> Third. Whether the presence of foreign-made bags in a bale imported as composed of American-made bags, the foreign-made bags being indiscriminately mixed in the bale with the American-made bags without the knowledge of the importer and with no intention on his part or on the part of the vendor and shipper to conceal the dutiable bags by mingling them with others free of duty, subjects the whole

bale to duty, because the importer who has complied with all the regulations prescribed by the Secretary of the Treasury as to the character of his importation fails to separate and designate the American-made bags, which he claims to be free of duty, and although the importer requests the customs officers to make such separation and to indorse on the invoices returned by them the percentage of American-made and foreign-made bags in each bale, which request is refused by the officers on the ground that they could not and would not make such separation, because it necessitated the going through the bales bag by bag to ascertain the percentage?

It is ordered that the above questions be certified to the honorable Supreme Court of the United States, and that the clerk transmit with this certificate a copy of the transcript of appeal and of the briefs filed.

It is believed that these questions are of sufficient importance to the administration of the customs laws to warrant a motion to advance the case for argument at the present term.

HOLMES CONRAD,
Solicitor-General.

In the Supreme Court of the United States.

OCTOBER TERM, 1897.

THE UNITED STATES, APPELLANT,
v.
RANLETT & STONE. } No. 218.

ON A CERTIFICATE FROM THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIFTH CIRCUIT.

BRIEF FOR THE UNITED STATES.

STATEMENT.

The appellees imported at the port of New Orleans, from Liverpool, England, by several vessels, in 1893 and 1894, about 3,000,000 grain bags, known as cental bags. The merchandise was entered as free of duty under paragraph 493 of the act of October 1, 1890 (26 Stat., 567–603), as bags of American manufacture returned to the United States. Paragraph 493 is as follows:

> Articles the growth, produce, and *manufacture of the United States*, when returned after having been

exported, without having been advanced in value or improved in condition by any process of manufacture, or other means; casks, barrels, carboys, bags, and other vessels of American manufacture, exported filled with American products, or exported empty and returned filled with foreign products, including shooks when returned as barrels or boxes; * * * *but proof of the identity of such articles shall be made*, under general regulations to be prescribed by the Secretary of the Treasury; and if any such articles are subject to internal tax at the time of exportation such tax shall be proved to have been paid before exportation and not refunded: *Provided*, That this paragraph shall not apply to any article upon which an allowance of drawback has been made, the reimportation of which is hereby prohibited except upon payment of duties equal to the drawbacks allowed. * * *

The general regulations prescribed by the Secretary of the Treasury contain the following provisions:

CUSTOMS REGULATIONS, 1892.

ART. 331. Articles of the growth, produce, and manufacture of the United States, exported to a foreign country and returned without having been advanced in value or improved in condition by any process of manufacture or other means, and upon which no drawback or bounty has been allowed, are entitled to entry free of duty, but this privilege does not extend to articles exported in bond from a manufacturing warehouse and afterward returned to this country. The exportation must be bona fide and not for the purpose of evading any revenue law.

* * * * *

If returned to the port of original exportation, the fact of regular clearance for a foreign destina-

tion must be shown by the records of the customs, * * * and by the declaration of the person making the entry. But when the reimportation is made into a port other than that of original exportation, there shall be required, in addition to the declaration, a certificate from the collector and the naval officer, if any, of the port where the exportation was made showing the fact of exportation from that port.

* * * * *

ART. 332. To guard against fraud, and to insure identity, the collector shall require, in addition to proof of clearance, the production of a statement, certified by the proper officer of the customs at the foreign port from which the reimportation was made, and authenticated by the consul of the United States, that such merchandise was imported from the United States in the condition in which it is returned, and that it has not been advanced in value or improved in condition by any process of manufacture or other means.

* * * * *

ART. 335. Casks, barrels, carboys, bags, and vessels of American manufacture, exported filled with American products, or exported empty and returned filled with foreign products, including shooks when returned as barrels or boxes, are free of duties, but in case drawback has been allowed upon the exportation of any such articles, they shall on importation be subject to a duty equal to the drawback. Proof of the identity of such articles must be made, and if any of them were subject to internal tax at the time of exportation, such tax shall be proved to have been paid before exportation and not refunded, or duty will accrue.

* * * * *

ART. 336. Before entry the following proof shall be required by the collector:

First. A certificate as follows from the shipper, in triplicate, attested by a consul or other proper officer authorized to take affidavits, as follows:

(Cat. No. 773.)

I hereby certify, under oath, that, to the best of my knowledge and belief, the* ——— hereinafter specified, are truly of the manufacture of the United States,† ——— or were exported from the United States, filled with ——— and that it is intended to reship the same to the port of ———, in the United States‡ ——— on board the ——— now lying in the port of ———. I further certify that, to the best of my knowledge and belief, the actual market value of the articles herein named, at this time and in the form in which the same are to be exported to the United States, is as follows§ ———.

——— ———.

Sworn to before me, this —— day of ———, 18—.

——— ———.

Second. A declaration in the entry by the importer of the name of the exporting vessel, the date of the ship's manifest, and the marks and numbers on the articles for which free entry is sought. If the exportation was made by railroad, the waybill may be substituted as evidence for the manifest.

*** Name the articles. † If the packages are empty insert statement of the facts, as "and were exported from the United States filled with the produce of that country." ‡ If the packages contain foreign merchandise insert "filled with" and a declaration of the merchandise they contain. § This blank is to be filled only when the merchandise contained in the packages is subject to a duty ad valorem.**

* * * * *

The marks and numbers should be such as to prove beyond any reasonable doubt the identity of the articles with those entered on the outward manifest. * * *

Third. An affidavit by the importer, attached to the entry, that the articles mentioned therein are to the best of his knowledge and belief truly and bona fide manufactures of the United States, or were bags exported therefrom filled with grain.

* * * * *

Fifth. Verification, after examination, by the appraiser with an endorsement stating whether the articles are of domestic or foreign manufacture.

Such bags and other coverings exported to be returned should, when practicable, be marked or numbered, in order that they may be identified on their return; and the marks or numbers should appear on the shipper's manifest upon which they are exported.

* * * * *

The course of the transactions in the case was as follows:

The goods were imported in 1893 and 1894, and upon the arrival in this country of the respective shipments free entry was made and evidence furnished regarding the right to free entry and the character of the goods. Samples of the respective invoices were then sent to the appraiser's office and examined as follows:

From one entry of 600 bales, 70 were ordered to the appraiser's store and 18 of that number were opened by him;

Of another entry of 650 bales, 33 were ordered to the store and 19 were opened;

Of a third entry of 325 bales, 38 were ordered to the store and 13 were opened;

Of a fourth entry of 850 bales, 85 were ordered to the store and 16 were opened;

Of a fifth entry of 350 bales, 21 were ordered to the store and 14 were opened;

Of a sixth entry of 100 bales, 100 were ordered to the store and 10 were opened;

And of a seventh entry of 100 bales, 100 were ordered to the store and 10 were opened.

The examination of the bales opened at the appraiser's was made by the appraiser assisted by an examiner. From the examination thus made the appraiser reported as to *each* importation that the bales contained bags of foreign manufacture, subject to duty, and thereupon the collector made impost entries, assessing duty at the rate of 2 cents per pound on the entire consignment under paragraph 365 of the act of 1890 as "bags for grain made of burlaps." (Certificate, pp. 1 and 2.) The importers protested against the "decision, liquidation, and rate and amount of duties assessed," and carried the matter to the Board of General Appraisers, which affirmed the action of the collector. (See opinion by Sharpe, general appraiser, printed in the appendix).

Under the protest of the importers from the collector's decision the fact was recognized that the bags might be of foreign manufacture. The protest also recognized the examination by the appraiser, but claimed that the examination was not fairly and faithfully performed, and that the assessment was incorrect. The protest does not specifically complain of the *illegality* of the examination, and it bases its final objection to the proceedings upon the contention that section 2910 of the Revised Statutes,

which provides for the assessment of duty upon goods of different values in the same invoice at the rate to which the highest valued goods are subject, does not apply to a mixture of foreign and American bags, on the ground that such goods are of one value. (Certificate p. 2.)

From the decision of the Board of General Appraisers the importers applied for a review to the circuit court, which reversed the decision of the collector and the Board of General Appraisers; and, upon the appeal by the United States from the decree of the circuit court, the following questions were certified to this court by the circuit court of appeals. (Certificate, pp. 3 and 4.)

> First. Whether the returns of the appraiser that the several importations of Ranlett & Stone contained bags of foreign manufacture, based on an examination not in conformity with law or the regulations of the Treasury Department, had the effect of overthrowing the *prima facie* case made by the importers, who were without fraud in the premises, and who had furnished all the proofs required by the customs regulations, to show that their importations were of bags free of duty?
>
> Second. Whether the presence of some bags of foreign manufacture, in a bale imported as composed of American-made bags free of duty, subjects to duty all the bags in the bale, by virtue of the unit rule established by section 2910 of the Revised Statutes, or by the general rules of law applicable to the case?
>
> Third. Whether the presence of foreign-made bags in a bale, imported as composed of American-made bags, the foreign-made bags being indiscriminately mixed in the bale with the American-made

> bags, without the knowledge of the importer and with no intention on his part or on the part of the vendor or shipper to conceal the dutiable bags by mingling them with others free of duty, subjects the whole bale to duty, because the importer who has complied with all the regulations prescribed by the Secretary of the Treasury, as to the character of his importation, fails to separate and designate the American-made bags, which he claims to be free of duty, and although the importer requests the customs officers to make such separation and to indorse on the invoices returned by them the percentage of American-made and foreign-made bags in each bale, which request is refused by the officers on the ground that they could not and would not make such separation, because it necessitated the going through the bales bag by bag to ascertain the percentage.

It further appears from the certificate (p. 3) that the appraiser and examiner, who examined the bales, were not able to say *with certainty* of any one bag that it was of foreign or of American manufacture; but the other witnesses called were no better informed, and it is fair to say that among the other witnesses were the importers themselves.

It seemed to be the case that *no one* could *certainly* tell a foreign-made bag from an American-made bag, for the reason, apparently, that the marks of distinction between them, based upon material, finish, thread, and stitch, were not clearly defined or indicated.

It was upon the evidence from which the foregoing facts are deduced that the court below (the circuit court) found that the examination of the bags was not in con-

formity with law or the Treasury regulations and was void, and that the liquidation of the duties based on the same was illegal and void, and the decree of the court ordered that the collector direct a reexamination to reliquidate the duties. (Certificate, p. 4.) The fact is that the goods had passed into and beyond the importer's possession and disposal, and could not be obtained for such reexamination and reliquidation of duties, and, therefore, that the decree was not capable of performance.

ARGUMENT.

I.

The first question propounded by the circuit court of appeals assumes, because the facts stated do not so establish, (1) that the examination of the bags was not made in conformity with law or the regulations of the Treasury Department; (2) that the importers "were without fraud in the premises" and had "furnished *all* the proofs required by the customs regulations to show that their importations were of bags free of duty;" and (3) that by complying with the regulations of the Treasury Department they had established a *prima facie* case that their importations were not subject to duty.

The certificate nowhere shows affirmatively in what respect the appraiser and examiner failed to comply with the law and regulations; it does not appear from the facts stated that *all* the requirements of the law and of the customs regulations were complied with; and it is not at all clear from the meagre statement made that the

importers established a *prima facie* case. It is also assumed, without reference to facts, that there was no intention on the part of the importer or of the foreign vendor and shipper to conceal dutiable bags by mingling them with others free of duty.

It is to be regretted that the full record of the case as it exists in the circuit court of appeals is not before the court in order that from the facts therein set out the questions certified might be more readily understood. Abstract questions are propounded which are not altogether justified by the concrete case. The Government submits to the court the question whether, in view of all the facts and of the transmittal with the certificate by the circuit court of appeals of a copy of the transcript of the record below, a proper determination of the case does not require the entire record to be before the court.

In order that the questions propounded in the certificate may be more fully understood, and in order that the court may determine whether those questions should be answered without having the entire record before it, there are filed with this brief, for the convenience of the court, printed copies of the record in the circuit court of appeals.

The questions certified are, however, to be regarded in the light of the facts so far as they are disclosed in the certificate. From this it appears that, although ten bales from every hundred were not taken to the appraiser's stores for examination except in two cases (ex steamship *Pallas* and ex steamship *Engineer*), the importers were not injured thereby.

(*a*) THE CLAIM THAT THE EXAMINATION WAS NOT ACCORDING TO LAW.

The statute (section 2901 of the Revised Statutes, printed in the appendix) is not mandatory.

It was intended for the benefit of the Government and not of the importer.

The objection based upon it is exceedingly technical where there is nothing to indicate that injury could have ensued, as where there is no reasonable basis for the claim that one package differs in character and quality from another.

Where the importer may apply to the courts to examine and review everything involving the legality of a demand by the collector, he does not require for his protection that statutes containing directions to officials as to the manner in which they shall be informed of the dutiable character of merchandise shall be regarded as mandatory. (*Origet* v. *Hedden*, 155 U. S., 228; *Erhardt* v. *Schroeder*, 155 U. S., 124.)

The purpose of the statute is to prevent fraud on the revenue by requiring that "the collector shall designate on the invoice at least one package of every invoice and one package at least of every ten packages of merchandise, and a greater number should he or either of the appraisers deem it necessary * * * to be opened, examined, and appraised." In such a case as this, where the goods were entered as American-made bags, *all* of which were claimed to be entitled to free admission, and where the sole question is whether *all* the merchandise in question was entitled to free entry or not, if in each

package examined the appraiser found dutiable goods, it was not necessary to examine one or more of each ten packages in order to determine whether the whole invoice was dutiable. "In the judgment of the examiner and of two or three of the witnesses, based upon what knowledge and experience they had, all the bales contained both bags of foreign manufacture and bags of American manufacture." "In the opinion of the examiner it was sufficient to find any foreign bags in any bale in order to make the whole bale liable to duty—a bale being in the opinion of the examiner a unit." (Certificate, p. 3.) A further examination would be simply cumulative.

This is strengthened by the fact that, as shown in the certificate (p. 3), no one could "certainly tell a foreign-made bag from an American-made bag." If this is so, then no examination of a larger number of bags than were examined would change the proportion of foreign-made bags found.

Nor is there reason to suppose that one bale differed from another in character or quality; indeed, it was substantially admitted that bags of foreign manufacture and American manufacture were indiscriminately mingled together, and no attempt was made by the importer on entry or afterwards to separate the bags claimed to be free and those which were dutiable.

The protection of the convenience of the taxpayer is not so vital as to authorize the court to treat a statute primarily directed to officers for their guidance and for the substantial protection of the Government as mandatory. The burden is upon the importer of overcoming

the presumption of regularity by proof that the exaction of duties was unlawful. (*Erhardt* v. *Schroeder*, *supra*.)

Besides, the penal provisions of the statute show that it is for the protection of the Government in detecting and punishing fraud. It bears no marks of an intention to protect the importer.

(*b*) THE CLAIM THAT THE EXAMINATION WAS NOT ACCORDING TO THE CUSTOMS REGULATIONS.

The presumption is in favor of the sufficiency and regularity of official action.

It is nowhere shown that the appraiser or the examiner failed to comply with any regulation of the Treasury Department. The presumption is that they did comply with every regulation.

When power or jurisdiction over a subject-matter is delegated to a public officer his official acts done are presumed to have been rightly done, and are, in general, binding and valid. (*Belcher* v. *Linn*, 24 Howard, 508, 522; *Origet* v. *Hedden*, 155 U. S., 228. *Muser* v. *Magone*, 155 U. S., 240.)

The regulations (Art. 336, cl. 5) require "verification after examination by the appraiser," which shows, of course, that statutory proof offered by the importer is not to be accepted as conclusive, but that the appraiser is directed to scrutinize the character of the importation. The appraiser, in the first instance, determines the character of the article described; if the formal proof misdescribes or represents incorrectly the character of the importation, either in the invoice or the entry, payment

of duties can not, therefore, be avoided. Where the misdescription is fraudulent, it is cause for forfeiture and constitutes a crime under section 9 of the customs administrative act. It is the duty of the appraiser "to ascertain, estimate, and appraise (any invoice or affidavit or statement * * * to the contrary nothwithstanding) the actual market value and wholesale price of the merchandise at the time of exportation to the United States in the principal markets of the country whence the same has been imported, and the number of yards, parcels, or quantities and actual market value or wholesale price of every of them, as the case may require." (Sec. 10, customs administrative act of June 10, 1890.)

Consequently the appraiser may correct the misdescription or disregard it, so as to perform his duty as required by law. Unless appraisers have this right the grossest frauds may be committed by the importer with perfect impunity, and if they have this right, as clearly they must, it follows that questions as to the nature of the produce imported, and its consequent classification in the invoice and entry, are questions of fact within the jurisdiction of the appraiser. (*Belcher* v. *Linn*, 24 How., 508, 522.) These considerations are as applicable to appraisals under the special conditions of the free-entry regulations as to appraisals generally.

It is suggested, however, that the appraiser or examiner had not "experience or knowledge of the matter in hand sufficient to be able to say with certainty of any one bag that it was of foreign or American manufacture." But it is also stated that "the other witnesses

[among whom, the fact is, were the importers themselves] appeared to be no better informed." (Certificate, p. 3.)

The officers of the customs are intelligent men, having special qualifications to perform the duties of the offices to which they are appointed. The appraisers are as competent as any class of experts to determine questions as to the origin and manufacture of bags. The general appraisers' opinion, which is by reference made a part of the certificate, and is set out in the appendix to this brief, shows that in their judgment the work of the appraiser who made the examination in this case had been faithfully performed and was satisfactory, which would hardly have been the case if the appraiser was not able to tell the difference between foreign and American bags. And since the importers were themselves ignorant of the distinction, it is only necessary to add that the burden at all times rests with the importers to establish the character of the bags as of American manufacture.

If the importers were not satisfied with the examination of their goods because of the alleged want of sufficient knowledge on the part of the appraiser and examiner, they had an opportunity to present evidence to the board on the hearing of the case at New Orleans. Having failed to do so, they can not impeach the appraisers. (See *United States* v. *China and Japan Trading Co.*, 71 Fed. Rep., 684.) Not having done so, the returns of those officers must be presumed to be correct. (*Erhardt* v. *Schroeder*, 155 U. S., 124, 128; *United States* v. *Rosenwald*, 35 U. S. App., 89, 98; *Arthur* v. *Unkart*, 96 U. S., 118, 122.)

But the importers complain, further, that the appraiser's proceedings are based upon the theory that if there are *any* bags of foreign manufacture appearing in a bale it renders the whole bale dutiable. The Government contends that this is and ought to be the true view of the case. The only bags entitled to free entry are bags of American manufacture. No bags of foreign manufacture are entitled to free entry, and no portion of a bale of bags entitled to free entry may properly, under any right construction of the law, consist of bags of foreign manufacture. It therefore makes little or no difference whether the examination of a bale is complete and exhaustive.

The importer's claim here is founded upon the underlying contention that the bags were, as a matter of fact, of American manufacture. It does not come from them with much force to object to the appraiser's view, that the presence in a bale of any bags of foreign manufacture renders the whole bale dutiable. The fact of the examination and its results, and of the objections to it, show that all the bags were not of American manufacture, and to be entitled to free entry under the plain view of the law and the proper construction of the regulations, it must be established that *all* the bags were of American manufacture.

Furthermore, the objection of the importers to the manner and extent of the appraiser's examination appears plainly illogical to us. It amounts to this argument on their part:

"Your examination, which revealed the presence of some foreign-made bags, was not fair and faithful; it

was not sufficiently extensive; you did not examine as many bales as you should have done, nor examine the bales carefully enough. If you had performed your duty strictly in this regard, further examination would have shown that there were fewer bags of foreign manufacture present in the bales than the examination as made revealed, or even that there were none."

This *reductio ad absurdum* seems to us the necessary conclusion of the importers contentions.

The importers imported in packages bags of foreign and American manufacture, indiscriminately mingled together, which they entered as free of duty on the ground that they were all American-made bags returned to the United States. The statute admits to the United States returned bags of American make alone, and then only on "proof of identity." The rules and regulations of the Treasury Department, made in pursuance of this statute, provide certain means for this "proof of identity." It may be true that the importers furnished documents purporting to comply in form with the requirements of the regulations. Such documents are not, however, conclusive proof unless verified by the appraiser after examination of the bags. (*Dominici* v. *United States*, 72 Fed. Rep., 46.)

As the statute provides that "proof of the identity of such articles shall be made" to entitle them to free admission, if an importation were made prior to or in the absence of any regulation of the Treasury on the subject, that proof, sufficient and satisfactory to the Government, would still have to be submitted. The same rule applies

here, where, although there are regulations, yet the Treasury Department, not being omniscient, could not foresee such a method of importation as we have here, and hence has not framed a regulation to cover it. Certainly the failure to provide an adequate or any regulation can not release from the absolute and plain requirement of the statute.

Suppose that there existed a regulation specifically providing that American-made bags, claimed to be entitled to free entry, should not be imported mixed or invoiced together with foreign-made bags, would the duty of the importers to identify the bags be any greater than it is now?

The whole question, therefore, is one of identity. The statute clearly puts on the importer the onus of proving that his goods are entitled to free entry. Can it be said that when the foreign vendor has made affidavit that the merchandise he is exporting is American bags entitled to free entry, and when the importer has further stated that to the best of his information and belief it is such, and has complied with the regulations which require the submission of documentary proof thereof, the importer has established a *prima facie* case that his goods are entitled to free entry, and that that *prima facie* case is not overturned when the appraiser on actual examination finds that the bags are not all American bags and therefore are not *all* entitled to free admission?

Certainly the burden of proof remains upon the importer when it is shown that, notwithstanding the alleged proofs of identity, the goods are not of American manufacture, and therefore are not identical with those ex-

ported. The appraiser must act on his judgment, and his decision, as we have seen, is final unless reversed in the manner provided by law, viz, upon protest filed, evidence submitted, and decision had thereon by the Board of General Appraisers.

The contention of the importers is, not that in an importation of bags entered by them as American-made bags it was found on examination by the customs officers that some few bags of foreign manufacture had accidentally or without their knowledge been included; but that, when in an importation of bags entered by them as American bags, and which the statute required them to prove were such, it was discovered by the customs officers that there were in each sample bale examined a number of foreign-made bags, it was the duty of the customs officers to examine each individual bag, to separate the foreign-made from the American-made, and to assess the one with the proper duty and permit the remainder to be entered free; in other words, that, notwithstanding a fraud on the revenue has become apparent, whether made knowingly by the importers or otherwise, the burden of proving that the bags were of American origin, and therefore entitled to free entry, was removed from them, by reason of the statements contained in their entry (even though they misrepresented the facts), and because of their compliance on paper with the regulations, and that it thereupon became the duty of the customs officers to prove that the bags were not entitled to free entry. It would seem that the mere statement of this position is its strongest refutation.

It appears, however, that the court, in preparing these questions, goes on the assumption that the burden of proof is on the Government. This is not a criminal proceeding for fraud on the revenue or a suit to forfeit merchandise, in which cases the burden of proof would be on the Government. (*United States* v. *Gooding*, 12 Wheat., 460.) This case on the contrary is a civil suit, brought for the recovery of duties, and the burden of proof is on the importer to substantiate his claims and prove the identity of his merchandise. (*Earnshaw* v. *Cadwalader*, 145 U. S., 247; *Erhardt* v. *Schroeder*, 155 U. S., 124.)

Again, the contention of the importers amounts to the statement that, having imported the bags in suit as American-made bags, and having submitted in good faith the formal proofs, accompanied by their own affidavit that the bags are of American manufacture, they have done *all* that it was incumbent upon them to do, and the bags are entitled to free entry because of the formal compliance with the regulations and the absence of fraud and bad faith, even if foreign bags are included in the bales.

The answer to this position is that section 2 of the customs administrative act of June 10, 1890, requires, without qualification, that invoices of imported merchandise shall contain a correct description of such merchandise, signed by the manufacturer or by the person owning or shipping the same, or by his duly authorized agent. As the foreign manufacturer or shipper is not within our jurisdiction or control, the law provides for the adoption by the domestic consignee or owner of the invoice and statements of the foreign manufacturer and shipper as his own, and he thereupon becomes liable, under section

9 of the said act, for the employment or use of any fraudulent or false invoice, affidavit, letter, or statement, written or verbal, by means of which the United States shall be deprived of lawful duties.

It is suggested that the court of appeals in reference to the examination was dealing with a question of law and not of fact, and therefore in finding as a fact that the examination was not in conformity with law and the regulations of the Treasury Department the court was really expressing a legal conclusion.

The conclusion is, therefore, both on the law as to the invoice under section 2901 and as to the detailed examination of the bales under the regulations, that the proceedings of the appraiser were not invalid as not being in conformity to the law and the regulations.

It is submitted that the first question should, when read in the light of the facts shown in this case, be answered affirmatively.

II.

Section 2910 is as follows:

> When merchandise of the same material or description, but of different values, is invoiced at an average price, and not otherwise provided for, the duty shall be assessed upon the whole invoice at the rate to which the highest valued goods in such invoice are subject.

Literally this section applies only where merchandise of different values is invoiced at an average price. But as the value of the merchandise here involved is not free from controversy, if a literal interpretation is to prevail

without consideration of the object of the statute, it might exclude the present case. But the object of the section is to prevent the indiscriminate mingling of goods of different values but of the same material and description in importations, so as to render difficult the ascertainment of the proportions of the respective goods present, and thus lead to fraud on the revenue.

It nowhere appears from the certificate that foreign and American made bags are not of different values, and as matter of fact the American bags have the advantage in the foreign market for bags, due to their right to free entry, and therefore sell for somewhat more than foreign bags. Consequently it might fairly be claimed that foreign and American made bags in this importation were of different value, and therefore that section 2910 literally applied.

But the inquiry for tariff purposes, where goods of like description and material, but differing as to dutiability or nondutiability, have been invoiced together generally as not dutiable, so much resembles the inquiry as to similar goods of different values invoiced as dutiable at a rate applicable only to one that it is difficult to see any real distinction between them. So far as the purpose and object of the inquiry in each case is concerned, it is identically the same. It is to protect the public Treasury, so that goods which ought to pay a greater amount of duty shall not be allowed to be brought in on payment of a less amount under cover of a grouping with goods properly paying a less amount. It is for this reason, and to prevent the experimenting with the judgment of the appraiser, that both statutes and customs regulations pro-

vide that the importer shall carry out separately, under the appropriate head in his entry, the value of each description of goods paying a different rate of duty. (Rev. Stat., sec. 2785; Customs Reg., 1892, art. 277, 278.) The goods must be invoiced and invoice certified to the same as if dutiable. (*United States* v. *Mosby*, 133 U. S., 273; *Phelps* v. *Siegfried*, 142 U. S., 602.) The present is but a particular application of the principle involved in that broader and more general rule.

As a penalty for disobedience of this rule, and because otherwise it would be practically impossible to prevent partial evasion of the tariff laws in such cases, Congress has provided that in all instances, whether arising honestly or dishonestly, where goods of different dutiability are so invoiced together, all shall pay the duty; that is, the highest duty which any of the goods if separately invoiced would pay.

This whole reasoning holds with equal force as to an invoice of two makes of bags of the same description and material invoiced under one general description, which in reality applies to one make only, but affects the duty to be paid by both. Though Congress directs in words that different values shall be taken notice of, the substantial meaning of the whole sentence is that a difference in *dutiability* shall be taken notice of. Free goods invoiced generally and indiscriminately with dutiable goods of the same description and material is as great if not a greater evil, and is the same sort of an evil, as is an invoicing of higher duty goods with lower duty goods. It is equally with the latter the evil intended to be controlled by section 2910.

An analogous rule of classification for customs purposes to the rule of section 2910 is that which provides, stated very generally, that articles composed of two or more materials shall be assessed at the rate of duty charged upon the component material of chief value. The same general principles are the foundation of both rules.

In cases under section 2910 the whole invoice is to be assessed at the rate which the highest valued goods would pay. Here the question is whether, dutiable goods being found in a bale together with nondutiable goods, the whole bale shall be subject to duty.

What is to be considered the unit for the purposes of the customs laws in examining and appraising? Clearly the bale. The importer buys by the bale and sells by the bale. It can not be said that the bag is the unit. It is not so invoiced or entered. The entry was not of so many thousand bags, but of so many bales of bags. A single bag is of comparatively small value. If each one must be scrutinized, then to carefully examine and appraise the entire three million bags would entail an enormous amount of labor on the customs officers which would cost more than the amount of duty recovered. Such a requirement was never contemplated by the customs laws.

It is submitted that the second question should be answered in the affirmative.

III.

As we have seen, the law carefully provides that proof of identity of the bags sought to be brought into the

United States free of duty shall be furnished. By implication, this provision requires that the bags shall not be so imported, that, as in this case, neither the customs officers nor the owner can identify them. They should be so separated and packed that the customs officers can, with facility, determine what is dutiable and what is not dutiable, and assess the one and pass the other. To hold that it is optional with the importer to bring into the United States dutiable goods and nondutiable goods indiscriminately mixed together, and that the Government, if it wants to collect its duty, must separate the dutiable goods to assess them, is to hold that Congress requires the officers of the customs to do not only an irksome but an unreasonable thing, disadvantageous to the Government, because leading to frauds upon the revenue, and beneficial only to the importer who seeks to commit fraud.

It is claimed on behalf of the United States that, as foreign-made bags were found in the importation, the identity had not been established, and that, therefore, proof not having been furnished that they were entitled to free entry, they must be treated as foreign-made bags. If, then, of the bales examined each showed the presence of foreign-made bags, and as the burden of proof was on the importer to establish the right to free entry which he claimed, the entire consignment was properly held to be subject to duty.

The fact that the importer bought in good faith and imported in good faith is no criterion by which to judge his rights. The question to be determined is the *fact*

whether the bags were American bags or not. The burden of proof is on him, and a *prima facie* case would not be made out until he brought bags apparently the same as those which were taken out of the United States, imported separately from any other bags, and complied with all the regulations of the Treasury Department.

The importer knocks at the door of the United States and seeks free admission. He must establish his right to come in. He can not be first permitted to come in as a matter of right and then compel the United States to prove its right to eject him.

The importer must distinctly specify on his invoice and entry whether the bags are foreign or domestic. Unless clearly proven by him to be domestic, all are dutiable. He can not compel the United States to ascertain for him how many he is entitled to have entered free, nor to identify his particular bags as the bags which someone else exported from the United States and sold to his vendor.

The Government says to the importer, "Bring your American made bags here and I will admit them free of duty." The Government does not say, "Bring your bags here and I will examine them and if I find there are American made bags among them, I will admit those free and assess duty upon the others."

Notwithstanding the statement in the certificate that the importers were "without fraud in the premises," it is apparent that this is an attempt *by someone* to evade the tariff laws by indirection. It is a commonplace of the trade that these methods are often pursued. If the

attempt is successful, many ways will readily be found to cast upon the Government the burden of proving its right to collect its duties.

There is no evidence in the record of fraud on the part of the importers in the present case. But the fact remains that in this case foreign-made bags were returned with others as American-made bags entitled to free entry.

In this connection it is to be noted that the certificate (p. 1) states that "these bags were purchased under a guarantee that they were bags of American manufacture, shipped from the United States, filled with the products thereof, and entitled to free entry on their return to the United States." The very fact that the importers deemed it necessary or proper to take such a guaranty shows that, notwithstanding the certificate states that they were "without fraud in the premises," they had knowledge of the practice prevailing at the time of importing into the United States foreign-made bags under the claim that they were American-made bags entitled to free entry, and protected themselves in this way from loss if the bags purchased by them were found to be not American bags and were assessed with duty.

Such frauds on the revenue resulted in an investigation by the Treasury Department and a breaking up of the practice. The Treasury records show that after this investigation there was a large increase in the importation of dutiable bags and a corresponding decrease in the importation of free bags. When the increase in the dutiable bags is noted, it is not difficult to understand the reason for the decrease in the importation of free bags.

It is to be noticed that the decree of the circuit court required the "collector to direct a reexamination to reliquidate the duties which may be lawfully due" on the merchandise imported. As the merchandise was in fact long ago returned to the importers, it is apparent that this decree is impossible of execution.

It is respectfully submitted that the third question should be answered to the effect that the presence of foreign-made bags in a bale imported as American-made bags subjects the whole bale to duty.

HENRY M. HOYT,
Assistant Attorney-General.
W. J. HUGHES.

APPENDIX.

OPINION OF BOARD OF GENERAL APPRAISERS.

(15070—G. A. 2623.)

Grain bags, returned domestic.

Before the United States General Appraisers at New York, May 21, 1894.

In the matter of the protests, 21861b., etc., of Messrs. Ranlett & Stone et al., against the decision of the collector of customs at New Orleans as to the rate and amount of duties chargeable on certain grain bags, imported per the vessels and at the dates named in the annexed schedule.

Opinion by Sharpe, general appraiser:

These protests cover some three and one-half millions of bags, entered at the port of New Orleans at different times between August 14, 1893, and January 15, 1894.

It appears from the papers that they are empty grain bags made of jute, and of the kind commonly known as centals. They arrive in large quantities, each bale containing 1,000 bags, one of these importations comprising 850,000 bags.

They are claimed variously in the protests—

(1) To be entitled to free entry under paragraph 493, N. T., as manufactures of the United States.

(2) That the bags of foreign manufacture are entitled to free entry under paragraph 649 of the act of March 3, 1883, "which has not been canceled" by the act of October 1, 1890.

(3) That they are free under section 7 of the act of February 8, 1875, which is claimed to be unrepealed.

(4) The claim is also set up that the examination by the appraiser was not fairly and faithfully made, one of the written arguments submitted to the board urging that the examiner's estimate was "not based on facts such as could be derived only from an actual and careful count of the packages bag by bag," and the importations to which the argument applied contained 2,925,000 bags.

The appraiser reports that one of the importers stated that the bags were sold abroad to them as being free of duty, and if found to be of foreign manufacture they (the importers) would hold the foreign exporter. One of the papers submitted in the case also states:

"These bags have been bought with the usual guaranty of free entry into this country from the parties in England, and are therefore supposed to be all bags of American manufacture."

The officers of the appraiser's department strongly assert the fairness and faithfulness of the examinations made, and a very burdensome amount of labor seems to have been done to reach a proper return. From some large invoices 10 per cent of the bales was ordered by the collector. In some invoices of 100 bales and 150 bales, respectively, all were ordered by the collector, and from one invoice of 30 bales 4 were ordered for examination, and the 26 others were subsequently demanded and not delivered by the importer. It does not appear that from some of the invoices the full amount of 10 per cent of the bales was ordered, but it does appear that all the merchandise covered by all the invoices was of the same character and description.

It was admitted that there were bags of foreign manufacture and American manufacture, all indiscriminately mingled together, no attempt being made on entry or afterwards to separate from these enormous totals of goods of the same class those claimed to be relieved from duty, accompanied by the proof establishing such indulgence.

In a recent decision of protest 61329A we have expressed some views in regard to the duty of importers in seeking the benefit of acts or parts of acts relieving merchandise from contribution to the revenue, and we hold similarly in the case now before us. In a carefully prepared paper, in the nature of a brief or argument, by one of the protestants herein for the consideration of the board at the time the oral evidence was taken, the claim is made that the documents required by regulations for the identification of the goods have been furnished, with the exception of those relating to merchandise exported by the Viscount from San Francisco, January 14, 1892, marked B. X. X. In regard to them the protestant states: "These are not available, having apparently been used by others."

There are sundry other lots referred to in the brief where the absence of the identifying certificates is accounted for by the statement that they are "not available" or "not obtainable." It is also admitted in the same brief that sundry other lots are excluded from free entry by reason of their having received drawback on exportation; and these two classes, admittedly excepted from the provisions for free entry, cover many thousands of bags of the importations now under consideration.

These admissions add to the evidence we have *aliunde*, that not only are the so-called returned bags not seen by the foreign exporter, nor by the home importer, who both make oath regarding their manufacture, but the documentary proof of identity required by law is indiscriminately disposed of to anybody who has bags to sell and can find a purchaser in the United States. The brief or argument closes with this statement signed by the importer:

> As I have not personally seen or inspected them (the bags), I am unable to state whether they are all American manufactured or only a portion of the

same. This evidence, I presume, will be furnished by the appraisers who have examined same.

The *onus probandi* of the appellants' claim is thus thrown upon the Government officers, the propriety of which we can not admit.

The admissions above recited do not surprise us, since in the evidence taken before us in G. A. 2448 proof was made that about thirty millions of cental bags are used for the exportation of grain from the Pacific ports, and only a small proportion of the centals thus used are of American manufacture.

The appraiser having examined all these importations and having reported the goods to be of foreign manufacture, duty was assessed by the collector on the bags under paragraph 365, N. T., at the rate of 2 cents per pound.

If this decision had been based on an insufficient examination, the importers might have asked for a reexamination, but they did not do so.

When, however, the protests come before the Board of General Appraisers on appeal, the insufficiency of, or alleged want of fairness in, the examination had no further relation to the decision of the case on the merits. The appellants were then here to prove their allegations, and they had abundant opportunity to do so. To suit their convenience, the testimony was taken at New Orleans, on notice, and all witnesses could be produced. The appellants then had their day in court, and they were there to establish affirmatively, and not by any indirect or negative testimony, the facts entitling their merchandise to free entry. The alleged inexperience of the Government examiners could no longer be criticised, for the door was open for the entrance of all expert witnesses that could be produced. The testimony introduced failed to sustain the allegations of fact made in the protest and corroborated the returns of the examining officers, which we find to be true.

We hold the provisions of the acts of March 3, 1883, and of February 8, 1875, under which alternative claims are made, are no longer in force. The facts proved and the claims made herein are in many points similar to those considered in passing upon those covered by protests 18225 *et al.* from San Francisco, and we refer to the views there held as applicable herein.

We find that these several protests have not been sustained, and we affirm the decision of the collector.

WILBUR F. LUNT,
GEORGE H. SHARPE,
Board United States General Appraisers.

21861-B-476, Ranlett & Stone, *Engineer*, October 10, 1893.
21862-479, Ranlett & Stone, *Vesta*, October 31, 1893.
21863-480, Ranlett & Stone, *Legislator*, October 3, 1893.
21965-481, Ranlett & Stone, *Assaye*, November 11, 1893.
22185-485, Ranlett & Stone, *Traveller*, December 28, 1893.
22186-489, Ranlett & Stone, *Pallas*, January 5, 1894.
22187-490, Ranlett & Stone, *Engineer*, January 17, 1894.

The following are the opinions of the Board of General Appraisers referred to in the foregoing opinion:

(14726—G. A. 2448.)

Free entry of foreign-made cental (grain) bags—Act of February 8, 1875, not in force.

Before the United States General Appraisers at New York, February 3, 1894.

In the matter of the protest, 55275a-12973, of Percy Kent against the decision of the collector of customs at New York as to the rate and amount of duties chargeable on certain grain bags imported per *St. Enoch*, June 28, 1893.

Opinion by SHARPE, general appraiser:

The protestant imported into the port of New York 75 bales of grain bags, the entry being made June 28, 1893, each bale being understood to contain 1,000 bags.

The merchandise was returned by the appraiser as empty grain bags bearing evidence of foreign manufacture and of having been used in the transportation of American products.

On this report duty was assessed by the collector thereon at 2 cents per pound, under paragraph 365, there being no dispute that the bags are made of burlaps and are imported empty.

The protest claims—

(1) That the bags are entitled to free entry under paragraph 493 as bags of American manufacture, exported filled with American products; and

(2) That if not free under said paragraph of the present act they are entitled to free entry under section 7 of the act of February 8, 1875, providing that bags other than of American manufacture in which grain shall have been actually exported from the United States may be returned empty to the United States free of duty under regulations of the Secretary of the Treasury. The alternative claim is reinforced by the contention that the act of February 8, 1875, is still in full force and effect, not having been repealed by any statute of the United States.

The greater part of the bags in which grain is exported from the United States leaves the country by the ports of the Pacific coast, and in the hearing before us proof was made that about 30,000,000 are used for the exportation of grain. About 5,000,000 of bags are made in California, and we have evidence to show that, during the year 1892, 30,000,000 of cental bags were exported from Calcutta to the Pacific ports of the United States, and about 4,000,000 to the port of New Orleans.

The number of second-hand bags, or returned cental bags, imported into the ports of the Eastern coast—New York, New Orleans, Boston, Baltimore, and Philadelphia—appears to be not less than 10,000,000 annually.

It may thus be reasonably supposed that of the bags returned empty to this country, which have been previ-

ously exported filled with grain, the greater proportion are of foreign manufacture, and, on the hearing, it was not denied that about 80 per cent of the importation under consideration were foreign-made bags.

On their return to this country the bags of foreign and American manufacture are brought in, indiscriminately mingled together in the same bale, leaving to the customs officers the tedious and laborious duty of separating them in order to establish the rights of the Government, and involving an expense perhaps equal to the duties to which the Government may be entitled.

It also appeared on the hearing that many bags on which drawback is claimed in San Francisco, as being made in this country from imported material on which duty has been paid, have a continuous black stripe an inch wide to indicate claim for drawback, and it may be well believed that such a mark would not be omitted from merchandise entitled to a privilege over other merchandise of the same kind.

There was little conflict upon the question of fact, but on the hearing the importer's counsel relied mainly upon the argument that section 7 of the act of February 8, 1875, remains in force, and on that contention briefs were submitted for the importer and also for the collector.

It is claimed for the appellant that paragraph 493 of the act of 1890 is a substitute for paragraph 649 of the act of 1883, and that the latter act would have operated as a repeal of section 7 of the act of 1875 as effectively as the act of 1890.

It is argued that the Treasury Department, however, in 1884, in article 381 of the regulations of that year, provided for the free entry of bags other than those of American manufacture in which grain shall have been actually exported from the United States, and by a circular of October 20, 1890 (Synopsis 10291), the Department recognized the act of 1875 as being in force after the passage of the act of 1890.

Further recognition of section 7 of the act of 1875 by the Department, after the passage of the act of 1883, is claimed, from the fact that in a document published by the Department entitled "Tariffs of 1883 and 1890 on imports into the United States," there was included in brackets with a subdivisional heading the language of the proviso to said section with a reference to the section and act.

However strong this implied construction may be, we find that later the question was distinctly presented to the Department, which, on the date of August 22, 1893 (Synopsis 14281), used the following language:

"Bags of foreign manufacture, exported with American products, will be subject, on being returned to the United States, to the same duty as if they had not been previously imported, it being held by this Department, in accordance with an opinion rendered on the 20th ultimo by the Attorney-General, that section 7 of the act of February 8, 1875, which provided for the free entry of such returned foreign bags, is repealed by the act of October 1, 1890."

The appellants relied upon the case of Russell *v.* Worthington (23 Fed. Rep., 248), where in March, 1885, or after the passage of the act of 1883, a proviso to section 4 of the act of 1875 was held to be in force. But an examination of this case shows that the proviso was considered by the court with reference to an existing treaty, and not otherwise, and the proviso was held to be in force by reason of the treaty.

We hold, in accordance with previous opinions of the board, and with the language of the court in the case of Straus and others (46 Fed. Rep., 522), that the act of 1890 is a substitute for all prior tariff legislation, so far as it lays a duty upon imported articles, and that paragraphs 365 and 493 cover all merchandise of the description under consideration that may be imported into the United States since the passage of the act.

We find as facts—

(1) That the bags had been used in the exportation of American grain, and were imported after such use as second-hand bags, being for the most part known as cental bags.

(2) That such second-hand bags, or cental bags, are made in very large quantities in foreign countries, and to a comparatively limited extent within the United States.

(3) That two bales, taken and agreed upon as representative bales, having been carefully examined bag by bag, were found to contain, out of the 2,000 bags, 1,613 of foreign manufacture and 387 of American manufacture.

As a result of the foregoing holding and findings, we affirm the action of the collector upon such bags as are of foreign manufacture, and we sustain the protest on such as are of American manufacture, and we authorize a reliquidation upon the classification of all the bales of the importation according to the proportions of foreign and American bags found in the two bales referred to.

(15033—G. A. 2610.)

Free entry of returned American grain bags.

Before the United States General Appraisers at New York, May 2, 1894.

In the matter of the protest, 18225-8*b*, of Balfour, Guthrie & Co., and Calton, Bell & Co., against the decision of the collector of customs at San Francisco, Cal., as to the rate and amount of duties chargeable on certain grain bags, American manufacture, imported per *British Isles*, March 15, 1892; *Manx King*, July 26, 1892, and *Eastcroft*, August 23 and 24, 1892.

Opinion by SHARPE, general appraiser.

These protests cover four importations at San Francisco of bags made of burlaps, which had been exported filled with American products, and are returned empty.

They are partly of American and partly of foreign manufacture. They are claimed to be of American manufacture and entitled to free entry under paragraph 493 of the present tariff; and the contention is also made that bags in which grain shall have been actually exported from the United States are entitled to be returned empty to the United States free of duty, under regulations prescribed by the Secretary of the Treasury, under section 7 of the act of February 8, 1875. The provisions of this section apply to bags other than of American manufacture.

There is a further claim in the protests that the Untied States appraiser did not diligently and faithfully examine and inspect such packages as were designated by the collector. This allegation is specifically denied by the appraiser, who reports circumstantially some of the methods of his examination and the acquiescence of the importers' representatives in the results reached.

No reexamination having been asked of or ordered by the collector, we must decline to allow any force in this claim.

In a case recently before us, arising at New York on a protest of Percy Kent (55275 *a*), the claim was made, as in this case, that foreign-made bags are entitled to free entry when returned to the United States, after being used for the exportation of grain, for the reason that section 7 of the act of February 8, 1875, is unrepealed. We there held the contrary of this contention, and we so hold in this case.

In the examination of the merchandise covered by invoice 3232, by the ship *British Isles*, it was found that the invoice had stated that 21,690 of the bags had been exported by the British ship *Aeolus*. This was a principal step to the identification of the bags, proof of which is required under the law and regulations. The examination showed that the 50 bales under consideration had

all been exported by the *Crown of Denmark*, and none by the *Aeolus*. The identification, therefore, utterly failed, and not only was no attempt made to supply the failure, but the appraiser reported that upon this failure being made known to the protestants they notified the appraiser's department of their intention to pay duty on the importation, and the examination thereupon ceased. When the examination of the merchandise covered by the other invoices was reached, the appraiser reported that the protestants admitted that the bags were not all of American manufacture, and that they would be unable to prove them not to be foreign made. Several experts in San Francisco testified from the examination made that the percentage of foreign-made bags was very largely in excess of those of American manufacture, and the bags appear to have been indiscriminately mingled together, without any attempt on the part of the importer to separate them or to designate those claimed to be free. Under these circumstances duty was assessed upon the entirety of the importation.

The customs officers claimed authority for such decision under a direction given by the Treasury Department (Synopsis 10098) in July, 1890, where, upon a proposed importation of mixed cargoes of anthracite and bituminous coal in such a mingled condition as to render it impracticable to separate the free from the dutiable coal for the purpose of the accurate weighing of each kind, the collector was instructed that the whole cargo should be treated as bituminous and assessed for duty.

We also find that December 28, 1868, an importation was made into the port of Rochester of sundry bales of rags, as containing rags for the manufacture of paper, it being found that the bales contained not less than 40 per cent of woolen rags. The law imposed a duty of 12 cents per pound on woolen rags, and admitted free such as were composed of cotton and linen and were intended for the manufacture of paper.

On this state of facts the honorable Secretary of the Treasury instructed the collector as follows:

"If you are satisfied that there was no intention on the part of the importers to conceal the dutiable rags by mingling them with others free of duty, you will not hold them for condemnation, but will allow the parties to separate such as are dutiable from such as are not so, and make entry accordingly."

These instructions of the Department are in harmony with the determination of the lawmaking power upon cognate subjects, as by section 2912 of the Revised Statutes Congress enacted as follows:

"When wool of different qualities is imported in the same bale, bag, or package, it shall be appraised by the appraiser to determine the rate of duty to which it shall be subjected, at the average aggregate value of the contents of the bale, bag, or package; and when bales of different qualities are embraced in the same invoice at the same prices whereby the average price shall be reduced more than ten per centum below the value of the bale of the best quality, the value of the whole shall be appraised according to the value of the bale of the best quality; and no bale, bag, or package shall be liable to a less rate of duty in consequence of being invoiced with wool of lower value."

Section 2910, R. S., also provides:

"When merchandise of the same material or description, but of different values, is invoiced at an average price, and not otherwise provided for, the duty shall be assessed upon the whole invoice at the rate to which the highest-valued goods in such invoices are subject."

Bags made of burlaps are dutiable, except such as are described in paragraph 493, and we hold it to be the duty of all persons bringing in goods claimed to be free, out of a class otherwise dutiable, to prove affirmatively the facts which constitute the exemption. We hold that they

should separate and designate such merchandise accompanied by the evidence acquired by law, and we decide that in these cases the protestants failed to meet the requirements of law and regulations.

The decision of the collector in each case is affirmed.

(15036—G. A. 2613.)

Free entry—Returned American flour bags.

Before the United States General Appraisers at New York, May 5, 1894.

In the matter of the protest 61329*a*-18369, of H. Brewer & Bro., against the decision of the collector of customs at New York as to the rate and amount of duties chargeable on certain flour bags, imported per *Ludgate Hill*, August 15, 1893.

Opinion by SHARPE, general appraiser:

This was an importation of 50,000 bags, in 50 bales of 1,000 each, by the steamship *Ludgate Hill*, August 15, 1893. They were returned by the appraiser as bags for grain made of burlaps, and on the invoice that officer further reported them to be "empty American-made flour bags covered by circular No. 21. Brands do not agree with the attached statement."

This further return established the fact that the merchandise is jute bags of American manufacture, known commercially as 140-pound flour bags. The collector decided that as the brands on the bags did not agree with the brands on the exported bags, which the importers claimed were the bags returned by this importation, the latter were subject to duty at the rate of 2 cents per pound.

The protest claimed the bags to be free under paragraph 493, N. T., alleging—

"That the proofs required by law and regulation as a prerequisite to admission free of duty have been presented, and are now in your [the collector's] custody, for the greater part of said bags."

There is no dispute that these bags are liable to the duty assessed by the collector unless they are released therefrom by the terms of paragraph 493, which provides for the free entry of bags and other vessels of American manufacture.

"But proof of the identity of such articles shall be made under general regulations to be prescribed by the Secretary of the Treasury. * * * *Provided*, That this paragraph shall not apply to any article on which an allowance of drawback has been made, the reimportation of which is hereby prohibited, except upon the payment of duties equal to the drawbacks allowed."

To establish the identity required by law, and which, in the language of the regulations, should be proved beyond any reasonable doubt, a list of brands was furnished by the importer, with the number of bags bearing each brand, exported by four several vessels, to wit, by the *Durham City*, 19,315; by the *Boston City*, 12,524; by the *Charlotte*, 18,100, and by the *Ariadne*, 61, thus accurately accounting for the whole importation of 50,000 bags.

But when the contents of one bale came to be examined the bale was found to contain only 13 brands which were included in the invoice list, and 152 brands which were nowhere on the invoice list. In other words, there was prima facie identification of 8 per cent of the contents of this bale, and conclusive disproof of the identity of 92 per cent thereof.

No attempt was made to supply this failure of evidence before the examining officers, nor again before the board on the hearing of the appeal, notwithstanding the fact that by Synopsis 13715 the importer is allowed one year from the date of importation to furnish the proofs required by regulations, and the hearing was held several months before the expiration of the period. No postponement was asked in order to supplement the evi-

dence, but the importer submitted his case on the official papers and reports, and we may fairly conclude that no proof of identity could be supplied other than the defective and misleading papers accompanying the entry.

Indeed, we know from evidence taken in other cases that the foreign exporter does not see the bags which he returns to this country with his affidavit, on information and belief that they are truly of the manufacture of the United States; and the importer's affidavit, on information and belief, to the same effect on entry, rests upon nothing but the oath of the foreign exporter. This practice obtains in regard to all bags returned to this country.

We know that grain bags are emptied of their contents on the docks in a foreign country, and they may, therefore, be assembled and identified; but in the case of flour bags, which are the subject of this inquiry, we know that they follow their contents into the interior, and are widely dispersed, and it would seem contrary to reason to believe that they are again gathered together to any considerable extent. In this case we are asked to give credence to the theory that 19,315 flour bags exported by one vessel, 12,524 by another, and 18,100 by a third were reassembled so as to reenter the United States in lots composed of their original associates.

Upon the failure of proof of identity above set forth, and upon the return by the examining officers, the collector assessed duty upon the whole importation, and we think he was right in doing so. We hold it to be the duty of the importer to make affirmative proof of a state of facts relieving his merchandise from duty, to which it would otherwise be subjected, and that he should segregate from the same class of goods such portions as are claimed to be free. He does not perform his duty by throwing upon the hands of the examining officers importations enormous in bulk and number, containing goods

that are free and dutiable indiscriminately mingled together, and requiring an army of officials to separate them. If segregated, the appraiser's subordinates could make such an inspection as is contemplated by law to verify the declarations made on entry; and the law does not contemplate the individual handling of the countless millions of articles of imported merchandise.

Such a method of administration, if made necessary, would require the expenditure of the revenue in the effort to collect it, or would entail unendurable and obstructive delays in the management of the public business.

In a case recently before us covering protests 18225–8 *b*, from San Francisco, we have cited some authorities from decisions of the Treasury Department, which cover this case, and to which we now refer, and for the reasons stated herein, and in such G. A. decision, we affirm the action of the collector.

REVISED STATUTES, SECTION 2901.

The collector shall designate on the invoice at least one package of every invoice, and one package at least of every ten packages of merchandise, and a greater number should he or either of the appraisers deem it necessary, imported into such port to be opened, examined, and appraised, and shall order the package so designated to the public stores for examination; and if any package be found by the appraisers to contain any article not specified in the invoice, and they or a majority of them shall be of opinion that such article was omitted in the invoice with fraudulent intent on the part of the shipper, owner, or agent, the contents of the entire package in which the article may be shall be liable to seizure and

forfeiture on conviction thereof before any court of competent jurisdiction; but if the appraisers shall be of opinion that no such fraudulent intent existed, then the value of such article shall be added to the entry and the duties thereon paid accordingly, and the same shall be delivered to the importer, agent, or consignee. Such forfeiture may, however, be remitted by the Secretary of the Treasury on the production of evidence satisfactory to him that no fraud was intended.

In the Supreme Court of the United States.

OCTOBER TERM, 1898.

THE UNITED STATES, APPELLANT,
v.
RANLETT & STONE.
No. 20.

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIFTH CIRCUIT.

BRIEF FOR THE UNITED STATES.

STATEMENT.

The appellees imported at the port of New Orleans, from Liverpool, England, by several vessels, in 1893 and 1894, 2,925,000 grain bags, known as cental bags. The merchandise was entered free of duty under paragraph 493 of the act of October 1, 1890 (26 Stat., 567–603), as bags of American manufacture returned to the United States. Paragraph 493 is as follows:

> Articles the growth, produce, and *manufacture of the United States*, when returned after having been

exported, without having been advanced in value or improved in condition by any process of manufacture, or other means; casks, barrels, carboys, *bags*, and other vessels of American manufacture, exported filled with American products, or exported empty and returned filled with foreign products, including shooks when returned as barrels or boxes; * * * *but proof of the identity of such articles shall be made*, under general regulations to be prescribed by the Secretary of the Treasury; and if any such articles are subject to internal tax at the time of exportation, such tax shall be proved to have been paid before exportation and not refunded: *Provided*, That this paragraph shall not apply to any article upon which an allowance of drawback has been made, the reimportation of which is hereby prohibited except upon payment of duties equal to the drawbacks allowed. * * *

The general regulations prescribed by the Secretary of the Treasury under this paragraph contain the following provisions:

CUSTOMS REGULATIONS, 1892.

ART. 331. Articles of the growth, produce, and manufacture of the United States, exported to a foreign country and returned without having been advanced in value or improved in condition by any process of manufacture or other means, and upon which no drawback or bounty has been allowed, are entitled to entry free of duty, but this privilege does not extend to articles exported in bond from a manufacturing warehouse and afterward returned to this country. The exportation must be bona fide and not for the purpose of evading any revenue law.

* * * * *

If returned to the port of original exportation, the fact of regular clearance for a foreign destination must be shown by the records of the customs, * * * and by the declaration of the person making the entry. But when the reimportation is made into a port other than that of original exportation there shall be required, in addition to the declaration, a certificate from the collector and the naval officer, if any, of the port where the exportation was made showing the fact of exportation from that port.

* * * * *

ART. 332. To guard against fraud, and to insure identity, the collector shall require, in addition to proof of clearance, the production of a statement, certified by the proper officer of the customs at the foreign port from which the reimportation was made, and authenticated by the consul of the United States, that such merchandise was imported from the United States in the condition in which it is returned, and that it has not been advanced in value or improved in condition by any process of manufacture or other means.

* * * * *

ART. 335. Casks, barrels, carboys, bags, and vessels of American manufacture, exported filled with American products, or exported empty and returned filled with foreign products, including shooks when returned as barrels or boxes, are free of duties, but in case drawback has been allowed upon the exportation of any such articles, they shall on importation be subject to a duty equal to the drawback. Proof of the identity of such articles must be made, and if any of them were subject to internal tax at the time of exportation, such tax shall be proved to have

been paid before exportation and not refunded, or duty will accrue.

* * * * *

ART. 336. Before entry the following proof shall be required by the collector:

First. A certificate as follows from the shipper, in triplicate, attested by a consul or other proper officer authorized to take affidavits, as follows:

(Cat. No. 773.)

I hereby certify, under oath, that, to the best of my knowledge and belief, the * ——— hereinafter specified, are truly of the manufacture of the United States,† ——— or were exported from the United States, filled with ——— and that it is intended to reship the same to the port of ———, in the United States ‡ ——— on board the ———, now lying in the port of ———. I further certify that, to the best of my knowledge and belief, the actual market value of the articles herein named, at this time and in the form in which the same are to be exported to the United States, is as follows § ———.

——— ———.

Sworn to before me, this —— day of ———, 18—.

——— ———.

* Name the articles.

† If the packages are empty insert statement of the facts, as "and were exported from the United States filled with the produce of that country."

‡ If the packages contain foreign merchandise insert "filled with" and a declaration of the merchandise they contain.

§ This blank is to be filled only when the merchandise contained in the packages is subject to a duty ad valorem.

* * * * *

Second. A declaration in the entry by the importer of the name of the exporting vessel, the date of the ship's manifest, and the marks and numbers on the articles for which free entry is sought. If the exportation was made by railroad, the waybill may be substituted as evidence for the manifest. The marks and numbers should be such as to prove beyond any reasonable doubt the identity of the articles with those entered on the outward manifest. * * *

Third. An affidavit by the importer, attached to the entry, that the articles mentioned therein are to the best of his knowledge and belief truly and bona fide manufactures of the United States, or were bags exported therefrom filled with grain.

* * * * *

Fifth. Verification, after examination, by the appraiser with an endorsement stating whether the articles are of domestic or foreign manufacture.

Such bags and other coverings exported to be returned should, when practicable, be marked or numbered, in order that they may be identified on their return; and the marks or numbers should appear on the shipper's manifest upon which they are exported.

* * * * *

The course of the transactions in the case was as follows:

Upon the arrival in this country of the respective shipments of the merchandise, free entry was made by the importer and certain evidence furnished regarding the right to free entry and the character of the goods. Samples of the respective invoices were then sent to the appraiser's office and examined as follows:

From one entry of 600 bales, 70 were ordered to the appraiser's store and 18 of that number were opened by him;

Of another entry of 650 bales, 33 were ordered to the store and 19 were opened;

Of a third entry of 325 bales, 38 were ordered to the store and 13 were opened;

Of a fourth entry of 850 bales, 85 were ordered to the store and 16 were opened;

Of a fifth entry of 350 bales, 21 were ordered to the store and 14 were opened;

Of a sixth entry of 100 bales, 100 were ordered to the store and 10 were opened;

And of a seventh entry of 100 bales, 100 were ordered to the store and 10 were opened.

The examination of the bales opened at the appraiser's stores was made by the appraiser, assisted by an examiner. From the examination thus made the appraiser reported as to *each* importation that the bales contained bags of foreign manufacture, subject to duty, and thereupon the collector, being authorized thereto by the Treasury Department, at the request of the importers, made impost entries, assessing duty at the rate of 2 cents per pound on the entire consignment, under paragraph 365 of the act of 1890, as "bags for grain made of burlap." (Rec., p. 24.) The importers protested against the "decision, liquidation, and rate and amount of duties assessed," and carried the matter to the Board of General Appraisers, which affirmed the action of the collector. (See opinion by Sharpe, general appraiser, Rec., p. 50.)

The protests of the importers against the collector's decision recognized, inferentially, that the bags might be of foreign manufacture. The protests also recognized the examination by the appraiser, but claimed

that the examination was not fairly and faithfully performed, and that the assessment was incorrect. The protests do not specifically complain of the *illegality* of the examination, and base their final objection to the proceedings upon the contention that section 2910 of the Revised Statutes, which provides for the assessment of duty upon goods of different values in the same invoice at the rate to which the highest-valued goods are subject, does not apply to a mixture of foreign and American bags, on the ground that such goods are of one value. (Rec., p. 6, *et seq.*)

The Board of General Appraisers (who had previously passed upon several cental bag cases, and were conversant with the subject and had knowledge of frauds which had been perpetrated) sustained the action of the collector in a carefully prepared opinion. From their decision the importers applied for a review to the circuit court, which, without taking any additional testimony and without rendering any opinion, reversed the decision of the Board, and entered a decree (Rec., p. 55) holding "that the examination heretofore made of said bales of bags is void and not in conformity to law or the regulations of the Treasury Department, and any liquidation of the duties based on said examination is illegal and void," and directing "that the liquidation of the duties heretofore made be set aside, and money received from Ranlett & Stone as duties be refunded as aforesaid; and the court doth further order and decree that the collector direct reexamination of said bales of bags to be made according to law, and on such reexami-

nation to reliquidate the duties which may be lawfully due thereon."

On appeal by the United States from the decree of the circuit court, certain questions were certified to this court by the circuit court of appeals.

Upon the argument and submission of the case, this court directed that a writ of certiorari issue to bring the entire record before it.

ARGUMENT.

I.

BURDEN OF PROOF.

The respective claims.

The underlying claim of the importers in this case is that, having brought to the United States certain bags sold to them as American bags entitled to free entry; having produced the certificates and certain other papers required by the Treasury regulations, and having entered the goods as American bags entitled to free entry, they have established a *prima facie* case, which shifts the burden of proof from them and puts upon the Government the onus of proving that the bags are not American made, and are not, therefore, entitled to be admitted free of duty.

The Government contends, on the other hand, that the burden of proof in such a case is always on the importer; that the general presumption is that all goods brought into the United States from abroad are subject to duty; that the particular presumption in this case is that the

bags, being brought to the United States from abroad, are of foreign manufacture and therefore subject to duty; that, consequently, all the facts necessary to show, beyond any doubt, that they are entitled to free entry must be proved by the importer; and that the burden of proof never shifts. The importer, it says, brings his goods to the United States and knocks at the door, asking admission; he can not, under any circumstances, be permitted to enter as a matter of right, and then compel the United States to prove its right to eject him.

The importers (Rec., p. 14) claim that they "have complied with the law and Treasury regulations as to the production of the sworn statements of the English shippers as to the origin of the goods, and certificates of the Pacific coast customs authorities as to their exportation therefrom filled with wheat, which *prima facie* evidence of their being of the manufacture of this country has not been disproved."

But even admitting, for the purpose of the argument, that in this case there was, by the production of the various papers required by the Treasury regulations, a *prima facie* case established, going to prove that the articles for which free entry was claimed were, as they were entered, *all* American-made bags, that *prima facie* case was overturned the moment the examiner, upon an inspection of the bags, ascertained that there were foreign-made bags among them. Consequently, if the burden of proof shifted from the importers, where it was initially, by their production of the papers referred to, it again shifted when foreign-made bags were found in the shipment.

It will not do to claim, in this position of the case, that the examiner and the appraiser who found the foreign-made bags, were incompetent, or that they did not examine a sufficient number of bales in each shipment; because the contention of the importers is not that the bags selected by the examiner from the bales were in reality American-made bags, but that if a further examination of the bales had been made a larger proportion of American-made bags would have been found than were reported by the examiner to the appraiser.

In other words, the position of the importers is that the examiner and appraiser should either have admitted all the bags free, or else, having discovered foreign bags therein, have examined every bag in at least one bale from each ten, in order to ascertain how many foreign and how many American bags they contained, and apply the proportions thereof to the entire invoice, so that the American bags might be admitted free and duty assessed upon the remainder. The claim was *not* that the bales, notwithstanding the examination disclosed the presence of what the examiner and appraiser claimed to be foreign bags therein, were, nevertheless, composed entirely of American bags as entered.

The claim that the examination was not according to the customs regulations.

The presumption is in favor of the sufficiency and regularity of official action.

It is nowhere shown that the appraiser or the examiner failed to comply with any regulation of the Treasury Department. The presumption and the fact is that they

did comply with every regulation. (Rec., pp. 21, 22, 23, 26.)

When power or jurisdiction over a subject-matter is delegated to a public officer, his official acts done are presumed to have been rightly done, and are, in general, binding and valid. (*Belcher* v. *Linn*, 24 Howard, 508, 522; *Origet* v. *Hedden*, 155 U. S., 228; *Muser* v. *Magone*, 155 U. S., 240.)

The regulations (art. 336, cl. 5) require "verification after examination by the appraiser," which shows, of course, that the proof offered by the importer is not to be accepted as conclusive, but that the appraiser is directed to scrutinize the character of the importation. The appraiser, in the first instance, determines the character of the article described; if the formal proof misdescribes or represents incorrectly the character of the importation, either in the invoice or the entry, payment of duties can not, therefore, be avoided. Where the misdescription is fraudulent, it is cause for forfeiture and constitutes a crime under section 9 of the customs administrative act.

It is the duty of the appraiser "to *ascertain*, estimate, and appraise (any invoice or affidavit or statement * * * to the contrary notwithstanding) the actual market value and wholesale price of the merchandise at the time of exportation to the United States in the principal markets of the country whence the same has been imported, and the number of yards, parcels, or quantities and actual market value or wholesale price of every of them, as the case may require." (Sec. 10, customs administrative act of June 10, 1890.)

Consequently the appraiser may correct the misdescription or disregard it, so as to perform his duty as required by law. Unless appraisers have this right the grossest frauds may be committed by the importer with perfect impunity, and if they have this right, as clearly they must, it follows that questions as to the nature of the produce imported, and its consequent classification in the invoice and entry, are questions of fact within the jurisdiction of the appraiser. (*Belcher* v. *Linn*, 24 How., 508, 522.) These considerations are as applicable to appraisals under the special conditions of the free-entry regulations as to appraisals generally.

It can not be said that the purpose of such provisions is to be restricted to appraisal to determine *value;* the words used in the various acts on the subject are the "inspection" or "examination" of merchandise, and "ascertain" refers to character and quality as well as value, the foundation for the whole scheme of regulation being based on the requirement that all the statements of invoice and entry, relating to the character of the goods as well as to value, shall be in all respects true. All the facts, as they really exist, must be shown.

The officers of the customs are intelligent men, having special qualifications to perform the duties of the offices to which they are appointed. The examiner who made the actual examination in this case was, as the record (p. 32) shows, fully competent to determine questions as to the origin and manufacture of the bags. The general appraisers' opinion (Rec., p. 42) shows that, in their judgment, the work of the appraiser was faithfully performed and was satisfactory, which would hardly have

been the case if the appraiser and the examiner were not able to tell the difference between foreign and American bags. And since the importers were themselves ignorant of the distinction (Rec., p. 40), it is only necessary to add that the burden at all times rests with the importers to establish the character of the bags as of American manufacture.

If the importers were not satisfied with the examination of their goods because of the alleged want of sufficient knowledge on the part of the appraiser and examiner, or otherwise, they should have applied for a reexamination. This they did not do; nor did they take advantage of the opportunity to present evidence to the board on the hearing of the case at New Orleans. (Rec., p. 43.) Having failed to do so, they can not impeach the appraisers. (See *United States* v. *China and Japan Trading Co.*, 71 Fed. Rep., 684.) Not having done so, the returns of those officers must be presumed to be correct. (*Erhardt* v. *Schroeder*, 155 U. S., 124, 128; *United States* v. *Rosenwald*, 35 U. S. App., 89, 98; *Arthur* v. *Unkart*, 96 U. S., 118, 122.)

The action of the collector is not based directly upon the report of the examiner. The examiner reports to the appraiser, whose duty it is to determine the question of the character of the goods. The statement of the examiner, therefore, that he found from 75 to 86 per cent foreign-made bags in the shipment (Rec., pp. 30 and 34) would not justify the collector in assessing duty upon a portion of the bags and admitting the remainder free.

It was for the appraiser to report to the collector, and upon that report the collector had to base his action. The

appraiser reported that he found the shipment to contain bags of foreign manufacture, and that the importation was dutiable at 2 cents per pound under paragraph 365. (Rec., pp. 21 and 26.)

It is to be noted that "all of the proofs required" by the Government were not submitted. The law requires proof of the actual identity of the bags, and this must be shown even in the absence of Treasury regulations.

The regulations, however, provide certain means of identification.

Article 335 provides "proof of the identity of such articles must be made," and article 336, section *fifth*, requires "verification, after examination, by the appraiser with an endorsement stating whether the articles are of domestic or foreign manufacture. Such bags and other coverings exported to be returned should, when practicable, be marked or numbered in order that they may be identified on their return."

The law, therefore, and the regulations specifically provide for the identificaton of the bags as bags which were exported from the United States and returned thereto. There could not have been a compliance with the statute and the regulations if the identity was not established. To show this identity, the certificate of the customs officer at the port of export, and the other papers required by the regulations, all of which were submitted by the importers, would not necessarily be conclusive. The certificate of the customs officers at the port of export would not be conclusive on Government if it were afterwards shown that foreign bags were exported from

the United States and the certificate issued upon the claim that they were of American manufacture. The law required an examination of the merchandise itself also.

But the importers complain, further, that the appraiser's proceedings are based upon the theory that if there are *any* bags of foreign manufacture appearing in a bale it renders the whole bale dutiable. The Government contends that this is and ought to be the true view of the case, excepting only the case of the accidental presence of a few foreign bags. The only bags entitled to free entry are bags of American manufacture. No bags of foreign manufacture are entitled to free entry, and no portion of a bale of bags entitled to free entry may properly, under any right construction of the law, consist of bags of foreign manufacture. It therefore makes little or no difference whether the examination of a bale is complete and exhaustive.

The importer's claim here is founded upon the contention that the bags were, as a matter of fact, of American manufacture. It does not come from them with much force to object to the appraiser's view, that the presence in a bale of any considerable quantity of bags of foreign manufacture renders the whole bale dutiable. The fact of the examination and its results, and of the objections to it, show that all the bags were not of American manufacture, and to be entitled to free entry, under the plain view of the law and the proper construction of the regulations, it must be established that *all* the bags, or at least substantially all, were of American manufacture.

Furthermore, the objection of the importers to the

manner and extent of the appraiser's examination appears plainly illogical to us. It amounts to this argument on their part:

"Your examination, which revealed the presence of some foreign-made bags, was not fair and faithful; it was not sufficiently extensive; you did not examine as many bales as you should have done, nor examine the bales carefully enough. If you had performed your duty strictly in this regard, further examination would have shown that there were fewer bags of foreign manufacture present in the bales than the examination as made revealed, or even that there were none, as we claim."

This *reductio ad absurdum* seems to us the necessary conclusion of the importers' contentions.

The importers imported in packages bags of foreign and American manufacture, indiscriminately mingled together (Rec., p. 42), which they entered as free of duty on the ground that they were all American-made bags returned to the United States. The statute admits to the United States returned bags of American make alone, and then only on "proof of identity." The rules and regulations of the Treasury Department, made in pursuance of this statute, provide certain means for this "proof of identity." It may be true that the importers furnished documents purporting to comply in form with the requirements of the regulations. Such documents are not, however, conclusive proof unless "verified" by the appraiser after examination of the bags. (*Dominici* v. *United States*, 72 Fed. Rep., 46.)

And the "proof of identity" must necessarily mean not only identity with the bags exported, but identity as

American-made bags. The statute and regulations proceed on the assumption that the bags exported are American-made bags. They are not always such.

As the statute provides that "proof of the identity of such articles shall be made" to entitle them to free admission, if an importation was made prior to or in the absence of any regulation of the Treasury on the subject, that proof, sufficient and satisfactory to the Government, would still have to be submitted. The same rule applies here, where, although there are regulations, yet the Treasury Department, not foreseeing such a method of importation as we have here, had not framed a regulation to cover it. Certainly the failure to provide an adequate or any regulation can not release from the absolute and plain requirement of the statute.

Suppose that there existed a regulation specifically providing that American-made bags, claimed to be entitled to free entry, should not be imported mixed or invoiced together with foreign-made bags, would the duty of the importers to identify the bags be any greater than it is now?

The question, therefore, is one of identity as American-made bags. The statute clearly puts on the importer the onus of proving that his goods are entitled to free entry. Can it be said that when the foreign vendor has made affidavit that the merchandise he is exporting is American bags entitled to free entry, and when the importer has further stated that to the best of his information and belief it is such, and has complied with the regulations which require the submission of documentary proof thereof, the

importer has established a *prima facie* case that his goods are entitled to free entry, and that that *prima facie* case is not overturned when the appraiser on actual examination finds that the bags are, substantially, foreign bags, and therefore are not *all* entitled to free admission?

Certainly the burden of proof is upon the importer when it is shown that, upon the examination of the articles themselves, notwithstanding the alleged proofs of identity, the goods are not of American manufacture, and therefore are not identical with those exported, or if identical with those exported, are still not of American manufacture. The appraiser must act on his judgment, and his decision, as we have seen, is final unless reversed in the manner provided by law, viz, upon reappraisement or upon protest filed, evidence submitted, and decision had thereon by the Board of General Appraisers.

The contention of the importers is not solely that in an importation of bags entered by them as American-made bags it was found on examination by the customs officers that some few bags of foreign manufacture had accidentally or without their knowledge been included; but, as an alternative, that, when in an importation of bags entered by them as American bags, and which the statute required them to prove were such, it was discovered by the customs officers that there were in each sample bale examined a substantial number of foreign-made bags, it was the duty of the customs officers to examine each individual bag, to separate the foreign-made from the American-made, and assess the one with the proper duty and permit the remainder to be entered free; in other words, that, notwithstanding a fraud on the revenue has become

apparent (even if not perpetrated intentionally by the importers), the burden of proving that the bags were of American origin, and therefore entitled to free entry, was removed from them by reason of the statements contained in their entry (although they misrepresented the facts), and because of their compliance on paper with the regulations, and that it thereupon became the duty of the customs officers to prove that the bags were not entitled to free entry, and notwithstanding the fact that this is not a forfeiture proceeding, but a suit to recover duties paid. It would seem that the mere statement of this position is its strongest refutation.

The lower courts, however, seem to have assumed that the burden of proof is on the Government. This is not a criminal proceeding for fraud on the revenue or a suit to forfeit merchandise, in which cases the burden of proof would be on the Government. (*United States* v. *Gooding*, 12 Wheat., 460.) On the contrary, it is a civil suit, brought for the recovery of duties, and the burden of proof is on the importer to substantiate his claims and prove the identity of his merchandise. (*Earnshaw* v. *Cadwalader*, 145 U. S., 247; *Erhardt* v. *Schroeder*, 155 U. S., 124.)

Again, the contention of the importers amounts to the statement that, having imported the bags in suit as American-made bags, and having submitted in good faith the formal proofs, accompanied by their own affidavit that the bags are of American manufacture, they have done *all* that it was incumbent upon them to do, and the bags are entitled to free entry because of the formal compliance with the regulations and the absence of fraud and bad faith, even if foreign bags are included in the bales.

The answer to this position is that section 2 of the customs administrative act of June 10, 1890, requires, without qualification, that invoices of imported merchandise shall contain a correct description of such merchandise, signed by the manufacturer or by the person owning or shipping the same, or by his duly authorized agent. As the foreign manufacturer or shipper is not within our jurisdiction or control, the law provides for the adoption by the domestic consignee or owner of the invoice of the statements of the foreign manufacturer and shipper as his own, and he thereupon becomes liable, under section 9 of the said act, for the employment or use of any fraudulent or false invoice, affidavit, letter, or statement, written or verbal, by means of which the United States shall be deprived of lawful duties.

The conclusion is, therefore, that both on the law and the examination of the bales under the regulations, the proceedings of the appraiser were not invalid as not being in conformity thereto.

The claim that the examination was contrary to Sec. 2901.

The statute (section 2901 of the Revised Statutes) is not mandatory. It is as follows:

> The collector shall designate on the invoice at least one package of every invoice, and one package at least of every ten packages of merchandise, and a greater number should he or either of the appraisers deem it necessary, imported into such port to be opened, examined, and appraised, and shall order the package so designated to the public stores for examination; and if any package be found by the

> appraisers to contain any article not specified in the invoice, and they or a majority of them shall be of opinion that such article was omitted in the invoice with fraudulent intent on the part of the shipper, owner, or agent, the contents of the entire package in which the article may be shall be liable to seizure and forfeiture on conviction thereof before any court of competent jurisdiction; but if the appraisers shall be of opinion that no such fraudulent intent existed, then the value of such article shall be added to the entry and the duties thereon paid accordingly, and the same shall be delivered to the importer, agent, or consignee. Such forfeiture may, however, be remitted by the Secretary of the Treasury on the production of evidence satisfactory to him that no fraud was intended.

This statute was intended for the benefit of the Government, and not of the importer.

The objection based upon it is exceedingly technical, where it is plain that injury to the importer did not ensue by reason of the failure of the appraiser to examine at least one bale in ten.

Where the importer may apply to the courts to examine and review everything involving the legality of a demand by the collector, he does not require for his protection that statutes containing directions to officials as to the manner in which they shall be informed of the dutiable character of merchandise shall be regarded as mandatory. (*Origet* v. *Hedden*, 155 U. S., 228; *Erhardt* v. *Schroeder*, 155 U. S., 124.)

The purpose of the statute is to prevent fraud on the revenue by requiring that "the collector shall designate on the invoice at least one package of every invoice and

one package at least of every ten packages of merchandise, and a greater number should he or either of the appraisers deem it necessary * * * to be opened, examined, and appraised." In such a case as this, where the goods were entered as American-made bags, *all* of which were claimed to be entitled to free admission, and where the sole question is whether *all* the merchandise in question was entitled to free entry or not, if in each package examined the appraiser found dutiable goods, it was not necessary to examine each of the ten packages in order to determine whether the whole invoice was as claimed. A further examination would be simply cumulative, and no examination of a larger number of bags than were examined would change the fact that foreign-made bags were found.

Nor is there reason to suppose that one bale differed from another in character or quality; indeed, it is clear from the testimony that bags of foreign manufacture and American manufacture were indiscriminately mingled together, and no attempt was made by the importer, on entry or afterwards, to separate the bags claimed to be free and those which were dutiable.

The burden is upon the importer of overcoming the presumption of regularity of the examination by proof that the exaction of duties was unlawful. (*Erhardt* v. *Schroeder*, *supra*.)

Besides, the penal provisions of the statute show that it is for the protection of the Government in detecting and punishing fraud. It bears no marks of an intention to protect the importer.

In *Erhardt* v. *Schroeder* (155 U. S., 124) this court, speaking by Mr. Justice Shiras, said:

> An examination of one package in ten of the merchandise might have shown to the satisfaction of the collector that the importation was of the character the importer claimed it to be; the examination of one package in fourteen may have given the collector a different impression to the *disadvantage* of the importer. But the proceedings do not necessarily end with the collector's decision, and the importer's rights are not finally fixed until the character of the goods has been found by a court.
>
> The protection of the convenience only of a taxpayer is not of such a vital nature as to authorize a court to treat a statute primarily directed to public officers for their guidance and the substantial protection of the Government as mandatory, and to consider official acts not in strict conformity with the statute as void.

As we have seen, the examination of a larger number of bales in any one invoice in this case would not in the slightest degree have affected the result arrived at by the appraiser. The importer sustained no injury. Even if he did, he should have applied for a reexamination, and should have produced evidence before the Board of General Appraisers to sustain the claim made in the entry that the bags were all of American manufacture, entitled to free entry, notwithstanding the report of the examiner and the return of the appraiser.

The communication of Ranlett & Stone to George C. Tichenor, president of the Board of General Appraisers,

dated New Orleans, April 9, 1894, makes the following claim:

> We claim that the evidence shows that the goods were not lawfully examined, as provided under section 2901 of the Revised Statutes, which states that one package of every ten shall be *opened, examined, and appraised;* and that failure to comply with said statute invalidated the appraisement, and in support of this claim cite the decision of the United States Supreme Court in the case of *Converse* v. *Burgess*, 18 Howard, page 413.

The case referred to turned upon the classification of an importation of sugar from Cuba upon which an ad valorem duty was payable. It appeared that certain sample packages were withdrawn which had been permitted to be exposed to the air, so that, as was claimed, they "would not afford a fair criterion by which to judge of the importation." From the appraisement made an appeal was taken to merchant appraisers. It was claimed by the importers that the merchant appraisers had not examined a sufficient number of the packages to be able to determine the character and value of the importation, and that they had the right, therefore, to go behind the return of the merchant appraisers.

It will be seen that this case has no application here, where there was no application for a reexamination, no appeal from the finding of the appraiser, and no submission of testimony or offer to submit testimony to prove the character of the goods when the question was being examined by the Board of Appraisers. Furthermore, in the sugar case, it was a question as to the value of the sugar, which might have been appraised at any one of

several values and ad valorem duty assessed accordingly. In this case it was simply a question of ascertaining whether bags claimed to be *all* American bags were actually *all* American bags.

The sample bags taken from the bales examined.

It is further stated in the letter of the importers to the Board of General Appraisers that, referring to the examiner, "the samples retained by him—87, one each out of 87 bales—representing shipments aggregating 2,925 bales, were neither sufficient in number nor so fairly drawn as to faithfully represent the goods and form a just basis for the action of the collector."

It appears from the Record (pp. 23, 26, 29) that the examiner and the appraiser complied with all of the regulations of the Treasury and took "every method to try to be just" about the examination. It further appears (Rec., p. 30) that the examiner "in some cases examined every bale of the whole entire invoice," and that (Rec., p. 31) he did not take a sample bag out of each bale opened and examined; that (Rec., p. 32) he used his "judgment to try to open sufficient to get at the classification of the goods," and that (Rec., p. 30) the samples that he took were all of foreign manufacture. He says (Rec., p. 30):

> I did not understand it to be my duty as an examiner that I should have anything to do with the few American bags I came across. I took the samples to show that foreign manufactures were found. I supposed if 75 per cent of the bags in the bale

were foreign manufacture, it carried the whole of them. That was my idea as an examiner, and the quantity in all these importations, where I opened the bags and counted, I found along about 80 to 86 per cent foreign make.

The 87 selected bags, therefore, could hardly be called samples of the bags contained in the selected bales. They were rather the proof of the United States of the presence of foreign bags in the bales examined, the examiner taking, after a careful examination of the whole bale, as he states (Rec., p. 30), not more than one bag from any bale he opened.

These bags were drawn from the bales at the time of the examination. They were not "for the action of the collector," but for the information of the appraiser. They presented to the appraiser indubitable proof of the presence of foreign-made bags in an importation claimed to consist solely of American-made bags. The appraiser thereupon made his return to the collector to the effect that the bales contained bags of foreign manufacture, and were dutiable at 2 cents per pound under paragraph 365. The collector thereupon assessed duty accordingly.

Mr. Naeff's testimony.

It is further stated (Rec., p. 14) in the same communication, "that the evidence and opinion of Mr. Naeff, called in as expert by the appraiser of this port on behalf of the Government, were diametrically opposite to those of the examiner."

The trend of Mr. Naeff's testimony was that he could

not swear that any of the bags were of American make. He says (Rec., p. 37):

> I could not swear whether it is American or foreign made; but what we have already taken on the foreign ships as being foreign are generally sewed with tarred thread.

Mr. Naeff's testimony was that he was engaged in the bag business, handling (Rec., p. 36) "mostly bags that are lent (loaned) to the ships, filled with grain, and, as a rule, shipped back again."

It is a matter of knowledge to the trade that the bags referred to by Mr. Naeff are what are known, technically, as "ship's bags," because it is the custom of the bag makers not to sell these bags outright to the ships, but to loan them for a voyage. These bags are entirely different from the cental bags in controversy. It does not follow that familiarity with "ship's bags" would enable the dealer to identify cental bags and name their country of origin.

Furthermore, the burden of proof being on the importer, if there was any question, as Mr. Naeff appeared to think there was, whether certain or any of the bags were American or foreign, the importer must show, beyond question of a doubt, that they were not foreign.

It seems to have been the practice of the custom-houses at first in dealing with importations of bags to find the percentage of foreign-made bags in the invoice and to assess duty upon them and admit the remainder free. Subsequently, however, the Department became aware of the frauds perpetrated upon the revenue by the

importation of foreign bags claimed to be American. Not having sufficient proof to establish the fact of fraud, however, the appraisers returned all such importations of bags claimed to be free of duty as foreign made when they found foreign-made bags present therein, basing their action upon the decision of the Treasury (synopsis 10098) in relation to the proposed importation of anthracite and bituminous coal, in which the collector was instructed that the whole cargo should be treated as bituminous and assessed for duty.

The separation of foreign and American bags, which are so similar in appearance that they can only be told apart after a very careful individual inspection, if at all, would be even more irksome than a separation of anthracite from bituminous coal, both of which are recognizable at sight.

Intermingling of the bags prima facie evidence of fraud, in effect if not in intent.

Though there is no evidence in the record of fraud on the part of the importers in the present case, the fact remains that foreign-made bags were invoiced and entered with others as American-made bags entitled to free entry.

In this connection it is to be noted that the Record (pp. 1 and 40) states that these bags were purchased under a guarantee that they were bags of American manufacture, shipped from the United States filled with the products thereof, and entitled to free entry on their return to the United States. The very fact that the importers deemed it necessary or proper to exact a guarantee

shows that they had knowledge of the practice prevailing among certain importers at the time, of importing into the United States foreign-made bags under the claim that they were American-made bags entitled to free entry, and protected themselves in this way from loss if the bags purchased by them were found to be of foreign manufacture and were assessed with duty.

Such frauds on the revenue resulted in an investigation by the Treasury Department and a breaking up of the practice. The Treasury records show that after this investigation there was a large increase in the importation of dutiable bags and a corresponding decrease in the importation of free bags. When the increase in the dutiable bags is noted, it is not difficult to understand the reason for the decrease in the importation of free bags.

In the absence of any express statute forbidding the importation of such goods intermingled together, it is obvious that such procedure is forbidden by the policy of the law. The very fact of importing dutiable and nondutiable goods in the same package without separately invoicing them, and then entering them *all* as free of duty, is, it is submitted, *prima facie* evidence of fraud, for the importer does not contend that *all* of the bags were of American manufacture and entitled to free entry. After their discovery by the examiner in the bales examined the importer admitted the presence of foreign-made bags in the bales examined. He made no attempt at any stage of the case to establish by evidence that the bags were actually of American make. He must be

held, therefore, to have admitted the foreign-made bags found by the examiner to be such. (Rec., p. 39, 40.)

This evidence is further strengthened by the fact, which has just been stated, that the importers, who must have had knowledge of the frauds then existing in the bag trade by which foreign-made bags were brought free into the United States, and which made it impossible for the honest to compete with the dishonest importer, required their vendors to indemnify them against a failure to secure free entry to the United States.

Mr. Ranlett (Rec., p. 40) said:

> To *guard* ourselves, we exacted from the shippers that they [the bags] should enter this country free of duty, and they invoiced them as bags of American manufacture, and contend that they are still entitled to free entry, and the consequence is *we are still unable* to collect our guarantee.

From this it would appear that, having been required by the United States to pay duty, they have endeavored to collect the amount paid under the indemnity bond. In other words, while contending here that the bags were of American manufacture entitled to free entry, they are insisting to their vendors that they were not.

The United States, in customs matters, can not deal directly with the foreign vendor who has knowledge of the character of the goods which he is sending to the United States. It deals with the importer. The importer here, as in every other case, was required to make affidavit as to the character of his goods.

Ordinarily such affidavit must be based upon the information conveyed to him by the foreign shipper, but

with the knowledge of the frauds being perpetrated in connection with the importation of such bags, in view of the fact that they deemed it *necessary* to require an indemnity bond, and of the further fact that, as stated in the record (p. 40), the "people on the other side" are unable to distinguish between foreign and American bags, separate them, and guarantee their free entry, how could the importers in this case honestly make the affidavit required by the customs regulations?

The importer can not, moreover, by any contrivance, so import, enter, or invoice his merchandise as to escape from the necessity of proving that his goods are as he represents them by his custom-house entry to be. In the present case the method of the importation seems to have been adopted to circumvent the Treasury regulations. It has not been customary to import articles of different values, or dutiable and nondutiable articles, in the same package. Whenever, in small importations, goods of either of these classes have been imported in the same package, it has always been the practice to invoice them separately.

In the Record (p. 42) the Board of Appraisers, in their decision in this case, state as follows:

> In a carefully prepared paper, in the nature of a brief or argument, by one of the protestants herein for the consideration of the board at the time the oral evidence was taken the claim is made that the documents required by regulations for the identification of the goods have been furnished, with the exception of those relating to merchandise exported by the *Viscount* from San Francisco, January 14, 1892, marked "B. X. X." In regard to them the

protestant states: "These are not available, having apparently been used by others."

There are sundry other lots referred to in the brief where the absence of the identifying certificates is accounted for by the statement that they are "not available" or "not obtainable." It is also admitted in the same brief that sundry other lots are excluded from free entry by reason of their having received drawback on exportation, and these two classes admittedly excepted from the provisions for free entry cover many thousands of bags of the importations now under consideration.

These admissions add to the evidence we have *aliunde*, that not only are the so-called returned bags not seen by the foreign exporter, nor by the home importer, who both make oath regarding their manufacture, but the documentary proof of identity required by law is indiscriminately disposed of to anybody who has bags to sell and can find a purchaser in the United States. The brief or argument closes with this statement, signed by the importer:

"As I have not personally seen or inspected them (the bags), I am unable to state whether they are all American manufactured or only a portion of the same. This evidence, I presume, will be furnished by the appraisers who have examined the same."

The court is respectfully referred to all the decisions of the Board of General Appraisers contained in the record, for a comprehensive indication of the methods and transactions in free-entry bag cases.

Examiner and appraiser not required to separate the bags and to ascertain the percentage of each.

All of the bags having been entered as of American manufacture, and, upon examination, the appraiser hav-

ing returned them all as dutiable, because he had found in the bales examined foreign-made bags, such examination was not void because the examiner failed to examine at least one bale in ten.

If the appraiser, upon such examination, had returned a certain percentage of the bags as of American manufacture, and a certain other percentage as of foreign manufacture, and the collector had assessed duty accordingly, then the examination of a larger number of bales from each invoice might have increased or decreased the percentage of foreign-made bags found.

But as from the examination made the appraiser was convinced that the importation contained foreign-made bags in quantities, he was required to do either one of two things: To separate the bags in each bale so as to ascertain the number of American and foreign-made bags, respectively—which would have required the examination of each individual bag in at least each of the sample bales examined; or, having found foreign-made bags in an importation entered as American-made bags free of duty, to return the entire invoice represented by the sample bales as subject to duty.

The burden of proof being ever on the importers to show that the goods which they bring to the United States are not subject to duty; that they are within the exception and not the rule, it was no part of the duty of the examiner or the appraiser to do the former. The appraiser, upon the report of the examiner, was to take the sample bales as he found them and ascertain their character. He did so and found them different from

what they were represented by the importers to be. It was not his duty to separate the bags into the two classes and return the one as dutiable and the other as entitled to free entry. He could return the bags as American-made bags if satisfied they were such, or foreign-made bags if he so concluded.

To return them as American bags when his examination disclosed the presence of foreign-made bags would have been a violation of his duty to the Government; to return them as foreign-made bags would not be unjust to the importers, because the presumption exists that they are foreign-made bags until proved otherwise. To say that it is his business to separate the foreign from the domestic bags is to say that the Government employs him to do a vain and irksome thing at its expense for the convenience of the importers; to officially recognize a course of procedure in the importation of foreign merchandise which opens wide the door to fraud, and which would entail upon the Government in the expense of examination greater cost than the amount of duty that could be collected.

The appraiser, therefore, was justified in returning the bags as of foreign manufacture. His action was simply a notification to the importers that, after an examination of their merchandise, the evidence which they presented to the custom-house in support of their contention that the bags were entitled to free entry was not deemed sufficient, and it thereupon became the duty of the importers, if they deemed the examination insufficient, to apply for a reexamination. If upon such a reexamination the appraiser still adhered to his position, it would then be the

duty of the importers, upon appeal to the Board of General Appraisers, to submit evidence to prove that the bags in question were of American manufacture and entitled to free entry. Neither of these things was done in this case.

II.

APPLICATION OF SECTION 2910 OF THE REVISED STATUTES.

Section 2910 is as follows:

> When merchandise of the same material or description, but of different values, is invoiced at an average price, and not otherwise provided for, the duty shall be assessed upon the whole invoice at the rate to which the highest valued goods in such invoice are subject.

Literally this section applies only where merchandise of different values is invoiced at an average price. But as the value of the merchandise here involved is not free from controversy, if a literal interpretation is to prevail without consideration of the object of the statute, it might exclude the present case. The object of the section, however, is to prevent the indiscriminate mingling of goods of different values but of the same material and description in importations, so as to render difficult the ascertainment of the character and value of the respective goods present, and thus lead to fraud on the revenue.

While it would seem from the testimony of Mr. Ranlett (Rec., p. 40) that foreign and American made bags are not of different values, yet as matter of fact the American bags have the advantage in the foreign market

for bags, due to their right to free entry, and therefore, when intended for exportation to the United States, doubtless sell for somewhat more than foreign bags. Consequently it might fairly be claimed that the foreign and American made bags in this importation were of different values, and therefore that section 2910 literally applied.

But the inquiry for tariff purposes, where goods of like description and material, but differing as to dutiability or nondutiability, have been invoiced together generally as not dutiable, so much resembles the inquiry as to similar goods of different values invoiced as dutiable at a rate applicable only to one, that it is difficult to see any real distinction between them. So far as the purpose and object of the inquiry in each case is concerned, it is identically the same. It is to protect the public Treasury, so that goods which ought to pay a greater amount of duty shall not be allowed to be brought in on payment of a less amount under cover of a grouping with goods properly paying a less amount or brought in free. It is for this reason, and to prevent experimenting with the judgment of the appraiser, that both statutes and customs regulations provide that the importer shall carry out separately, under the appropriate head in his entry, the value of each description of goods paying a different rate of duty. (Rev. Stat., sec. 2785; Customs Reg., 1892, art. 277, 278.) This is so, even when he claims his goods are entitled to free entry; the goods must be invoiced and invoice certified to the same as if dutiable. (*United States* v. *Mosby*, 133 U. S., 273; *Phelps* v. *Siegfried*, 142 U.S., 602.) The present case is but a particular

application of the principle involved in that broader and more general rule.

As a penalty for disobedience of this rule, and because otherwise it would be practically impossible to prevent partial evasion of the tariff laws in such cases, Congress has provided that in all instances where goods of different dutiability are so invoiced together, all shall pay the duty; that is, the highest duty which any of the goods if separately invoiced would pay.

This whole reasoning holds with equal force as to an invoice of two makes of bags of the same description, but of different dutiability and material, invoiced under one general description, which in reality applies to one make only, but affects the duty to be paid by both. Though Congress directs in words that different values shall be taken notice of, the substantial meaning of the whole sentence is that a difference in *dutiability* shall be taken notice of. Free goods invoiced generally and indiscriminately with dutiable goods of the same description and material is as great if not a greater evil, and is the same sort of an evil, as is an invoicing of higher-duty goods with lower-duty goods. It is, equally with the latter, the evil intended to be controlled by section 2910.

An analogous rule of classification for customs purposes to the rule of section 2910 is that which provides, stated very generally, that articles composed of two or more materials shall be assessed at the rate of duty charged upon the component material of chief value. The same general principles are the foundation of both rules.

In cases under section 2910 the whole invoice is to be assessed at the rate which the highest valued goods would pay. Here the question is whether, dutiable goods being found in a bale together with nondutiable goods, the whole bale shall be subject to duty.

What is to be considered the unit for the purposes of the customs laws in examining and appraising? Clearly the bale. The importer buys by the bale and sells by the bale. It can not be said that the bag is the unit. It is not so invoiced or entered. The entry was not of so many thousand bags, but of so many bales of bags. A single bag is of comparatively small value. If each one must be scrutinized, then to carefully examine and appraise the entire three million bags would entail an enormous amount of labor on the customs officers, which would cost more than the amount of duty recovered. Such a requirement was never contemplated by the customs laws.

As we have seen, the law carefully provides that proof of identity of the bags sought to be brought into the United States free of duty shall be furnished. By implication, this provision requires that the bags shall not be so imported that, as in this case, neither the customs officers nor the owner can with absolute certainty identify them. They should be so separated and packed that the customs officers can, with facility, determine what is dutiable and what is not dutiable, and assess the one and pass the other.

The fact, as is alleged, that the importer bought in good faith and imported in good faith is no criterion by which

to judge his rights. The question to be determined is the *fact* whether the bags were American bags or not.

The importer must distinctly specify on his invoice and entry whether the bags are foreign or domestic. Unless clearly proven by him to be domestic, all are dutiable. He can not compel the United States to ascertain for him how many he is entitled to have entered free, nor to identify his particular bags as the bags which he or someone else exported from the United States and sold to him or to his vendor. Even if so identified, the *fact* they are American bags must still be established by him.

The Government says to the importer, "Bring your American-made bags here and I will admit them free of duty." The Government does not say, "Bring your bags here and I will examine them, and if I find there are American-made bags among them I will admit those free and assess duty upon the others."

Notwithstanding it is earnestly claimed that the importers were "without fraud in the premises," it is apparent that this is an attempt *by someone* to evade the tariff laws by indirection. It is a commonplace of the trade that these methods are often pursued. If the attempt is successful, many ways will readily be found to cast upon the Government the burden of proving its right to collect its duties.

III.

THE ACT OF FEBRUARY 8, 1875, HAS BEEN REPEALED.

It is claimed in the protest (Rec., p. 5, etc.) that the bags were entitled to free admission under the act of

February 8, 1875, as bags other than of American manufacture, in which grain shall have been actually exported.

The question whether this act is still in force was passed upon by the circuit court of appeals for the second circuit, in the case of *Kent* v. *United States* (73 F. R., 680) the court, speaking by Shipman, J., holding it to have been repealed.

IV.

THE BRIEFS FOR THE APPELLEES.

The proceeding of the Board of General Appraisers was not, as stated by opposing counsel, "perfunctory." On the contrary, it is shown by the Record (pp. 43, 52) that the Board of Appraisers sent one of its members to New Orleans to take testimony in the case. It was only after careful investigation, and with the knowledge which they had acquired in connection with previous similar cases, that the board sustained the action of the collector. The circuit court, which reversed the appraisers' decision, however, appears to have acted in a perfunctory manner. It nowhere appears that it took additional testimony, and no opinion seems to have been rendered. It simply reversed the decision of the Board of Appraisers and entered a decree which, as has been shown, is impossible of execution.

This is not a class case. There are no other cases dependent upon it. Cases of this kind were provided against when the Department became aware of the frauds that had been perpetrated.

It is *not* conceded by the Government that the importers acted in good faith. Under the certification of questions, the circuit court of appeals having assumed that fact, the Government was not in the position to charge fraud. The Government does not now *charge* the appellees with fraud, but, as above shown, it contends that the action of the importers was *prima facie* evidence of a fraudulent device on the part of someone to bring dutiable bags into the United States without paying duty thereon. The fact of the matter is that subsequent to this importation the investigation entered upon by the Treasury Department established the fact long suspected of fraud in many cases of this kind. While it suspected fraud at the time of this importation, seizure was not made because the Government did not have sufficient proof, and if the goods had been seized proof of fraud would have been upon the Government.

As has been shown, the importers did not "furnish the evidence required." Anything which was short of the absolute proof of identity was not a compliance with the law or the regulations. If the goods themselves, on inspection, were shown to be foreign made, or even raised a doubt as to their character, the appraiser had to be governed by his inspection of the goods. The decision (synopsis 14912) by Assistant Secretary Hamlin was issued before the Treasury Department became aware of the frauds in bag importations. It was afterwards modified (synopsis 18425). The fact that Mr. Hamlin or the collector of customs at New York was of the opinion that no law prohibited the importation of such bags

mixed together is immaterial. The opinion of an executive officer upon a question at law does not bind the Government in matters of its legal rights.

The necessity of examining more than the usual number of packages is for the protection of the Government, when the examination of the number ordinarily required might not disclose, or fully disclose, the character of the merchandise for the purpose of appraisement. (*Erhardt* v. *Schroeder*, *supra*.) This is further shown by the fact that formerly (sec. 22, act April 20, 1818, 3 Stat., 433, 438) the collector was required to cause "at least one package of every invoice, and one package at least out of every fifty packages * * * to be opened and examined, etc." No doubt the various evils of fraud and evasion, and especially that of undervaluation, dictated the increase from one in fifty to one in ten. But this was for the Government's protection and not for the importer's.

But while the Government does not charge fraud, or necessarily impugn the good faith of the importers, it calls attention to the fact that, being in the trade, they were necessarily aware of this course of dealing, or, if they were not, their ignorance and blindness served as a shield for fraud and bad faith on the part of foreign vendors and shippers, or other persons unknown, whom the Government can not reach. In either case fraud upon the Government was the effect and result of the transactions.

The cases of *Oelbermann* v. *Merritt* (123 U. S., 356) and *Robertson* v. *Frank Bros. Co.* (132 U. S., 17), like

the previous case of *Converse* v. *Burgess* (18 Howard, 413), were cases in which merchant appraisers were called upon to appraise the merchandise involved, and in which appeals were taken from the action of the appraiser. Their examination might either increase or decrease the estimated value of the merchandise, and change the amount of the *ad valorem* duty payable. In this case, if there had been a reexamination, which was not, however, applied for, or if a larger number of bales had been examined, it could not possibly have shown anything different from that which the examination which was made had disclosed. All of these cases were cases of appraisement; here it is a question of examination or "ascertainment," as distinguished from appraisement—that is, the ascertainment whether the goods are actually as they are claimed in the entry to be. The question of the value of the bags, whether they were worth one amount or another, did not enter into it. In fact, the importers claim that whether the bags were American or foreign the value was the same.

The importers take exception to the lack of experience which they claim on the part of the examiner. In the very nature of things the examiner can not, in many instances, be as familiar as the manufacturer or importer with the particular art involved. The manufacturer may improve his output and no knowledge of his improvement come to the notice of the examiner until the goods reach his hands. In this case the "testimony of persons of requisite experience"—the importers themselves—could not be presented to the appraiser, for, as

we have seen, his duty was only to ascertain whether the bags actually imported were one thing or another; and such testimony was not presented when opportunity was offered by the Board of General Appraisers. The opposing argument loses sight entirely of the fact that the examiner and appraiser, both of whom the record shows were qualified to judge, on examination found that *some* of the bags claimed to be American were foreign-made.

On page 10 of Mr. Maury's brief at the former hearing he says, "but supposing, for the sake of argument, that the presence of foreign-made bags in the packages examined was established, it was *purely arbitrary* to assess duty on all the importations to which such packages belong as consisting *wholly* of foreign-made bags." It would have been equally arbitrary if, having discovered foreign-made bags in an importation claimed to be exclusively of American manufacture, the appraiser had found *all* the bags to be American, and the collector had admitted them free.

The importers, then, appear to have purposely adopted the plan of intermixing the two kinds of bags, supposing, in a mistaken view of the law, that the examiners would either have to do the very irksome duty of examining each individual bag, or else passing the invoice as entered—that is, as American bags entitled to free admission. The examiner and appraiser did neither. They adopted the plain, common-sense view of ascertaining whether the thing was as it was claimed to be, and finding it not to be as claimed simply said so, and called

upon the importers for more proof of his claim. In other words, the presumption being that the importation was foreign, the examiner and appraiser after examination simply said that, notwithstanding the evidence presented by the importers, they still regarded it as foreign.

Mr. Maury, on page 12 of his earlier brief, quotes section 2901, Revised Statutes, and italicises the concluding portion thereof. It has already been stated why the goods were not seized. The appraiser did *in effect* exactly what under this section counsel contends he should have done—that is, the articles (i. e., the foreign bags) were added to the entry and duty assessed thereon. Counsel says (p. 12) "it will hardly be contended that the appraisers *found* bags of foreign manufacture in the packages which were not even opened by them." This argument is unique. If it is correct, then it necessarily follows that the bales sent to the appraisers' stores were not "samples," and that every other bale in the entire importation than those examined must be held to be of American bags exclusively.

Reference is several times made to the "accidental" presence of foreign bags in the bales examined. The accidental presence of from 75 to 86 per cent of foreign-made bags in an importation of nearly three million bags claimed to be entirely of American manufacture is rather unique, to say the least; besides, the "accidents" appear to have occurred with remarkable regularity and uniformity in the bales examined!

The importation was one of two things—either it was, as claimed, American bags, or it was not American bags. As in the packages examined it was found that there were foreign bags, it could not have been that the importation was exclusively of American-made bags, which alone the statute permits to be entered free of duty. It was consequently useless to examine a larger number of packages than were examined, because such examination would not remove the already ascertained fact that the goods were not exclusively of American manufacture. The importer, therefore, has not been injured by the failure of the examiner to examine at least one package in every ten.

Counsel said that "there is no law forbidding the importation of domestic and foreign bags in the same package," but here American bags only, it was alleged, were contained in the packages. The appraiser had to verify this fact, if such it was, and found on the contrary that all were not American bags. We have not, therefore, in this case an entry of foreign and American made bags in the same package, invoiced as American and foreign made bags, but an invoice of American-made bags which, on examination, proves to be, in part at least, composed of foreign dutiable bags.

On page 13 (Maury brief at former hearing) counsel say that it was "unreasonable to the last degree" to require the importer to properly separate and designate his merchandise. This assumes innocence on the part of the importer, but the circumstances surrounding the case

impute knowledge to him. If he was innocent, as claimed, then his vendor was guilty. There was privity between him and his vendor, and not between the Government and the vendor, and the discovery of the fact that the goods were not as the importer, let us say, believed them to be could not throw the resulting burden upon the Government.

Counsel say (p. 16) "the importer believed that the contents of the bales of each importation were bags of American origin, and he adduced the prescribed legal proof that they were such. Surely the proof thus adduced must stand until legal evidence, of some kind, to the contrary is produced by the Government." The Government did produce "legal evidence;" it produced evidence which was not "vague or doubtful;" it produced irrefutable evidence when it produced the foreign bags themselves from the bales.

The separation of foreign and domestic bags by the examiner was practically impossible. In this case, to use the words of counsel, "the importer has designedly produced a condition of things which has given a dutiable character to the whole mass," and must abide by the consequences.

In the earlier briefs counsel claim it to be the right of the importer to bring in the bags mixed together (Semmes brief, p. 9); elsewhere it is asserted that the mixing was accidental (Maury brief, p. 19). It is certain, however, that the bags were mixed together, and that the importers indemnified themselves against the discovery of the "accident."

It is also stated in the brief that the American bags should have been admitted free even if (after an examination) some foreign-made bags were assessed for duty; but it must be remembered that the protest was against the exaction of *any* duty on *any* bags.

V.

THE MOTION TO STRIKE OUT, ETC.

Although it is not specifically stated in the record, it is understood that as cases involving importations of bags by the appellees here and by Mr. Henry Charnock were pending at the same time before the Board of General Appraisers, both having arisen at the port of New Orleans, the testimony taken by Mr. Wilkinson, one of the members of the board, was taken in both cases at the same time. It does not appear from the record that any agreement was had that the cases should be heard together. It is evident, however, from the fact that the return of the Board of General Appraisers in this case contains portions of the testimony taken in the Charnock case, that there was an agreement, either tacit or expressed. The board say (Rec., p. 19), "There is returned herewith the testimony taken by the board relating to the protests covered by the decision herein. Said testimony is marked Exhibit Q." Exhibit Q is found on page 27 of the record and contains the testimony objected to. No reason appears, therefore, for striking out the portions of the return of the Board of General Appraisers set out in the Record, page 55, unless the fact that those

statements are prejudicial to the importers. To the ruling of the court striking out the parts referred to, the district attorney (Rec., p. 54) reserved an exception.

VI.

THE DECREE BELOW.

The decree of the circuit court provided as follows:

> The court doth further order, adjudge, and decree that the duty paid by the importers, Ranlett and Stone, on the 2,925,000 bags imported by them * * * be refunded and paid to petitioners, * * * and the court doth declare that the examination heretofore made of said bales of bags is void and not in conformity to law or the regulations of the Treasury Department, and any liquidation of duties based on said examination is illegal and void, and the liquidation of duties heretofore made be set aside, and the money received from Ranlett and Stone as duties be refunded as aforesaid; and the court doth further order and decree that the collector direct a reexamination of said bales of bags to be made according to law, and on such reexamination to reliquidate the duties which may be lawfully due thereon.

This decree was entered December 20, 1895. It directs a reexamination of the bales, which was not asked for by the importers at the time of the examination, and after the importers (who at the time were apparently satisfied with the *examination* because they did not ask for a reexamination), had received from the Government and presumably disposed of their goods. The reliquidation of the duties decreed is made to depend upon a reexamination.

The merchandise in controversy having been long since delivered to the importers, including the sample bales which had been retained by the appraiser, and having doubtless passed into commerce, it is obvious that the decree is impossible of execution.

It is to be noted that the action here, as commenced in the circuit court, was against the Board of General Appraisers; that a copy of the petition was served upon the collector; that the decree of the court is against the collector and directs the return of the duties paid. The act of June 10, 1890, contemplates that customs suits, when instituted by the importer or his agent, shall be against the United States. Section 24 provides a permanent indefinite appropriation for the payments of judgments against the Government in customs cases, and section 25 provides that "no collector or other officer of the customs shall be in any way liable," etc., in such cases. The collector having paid into the Treasury the amount of duties collected by him, as he is required by law to do, this decree can only be effective as a decree or judgment against the United States—which it is not, at least in form.

It is respectfully submitted that the decree of the circuit court should be reversed.

HENRY M. HOYT,
Assistant Attorney-General.
W. J. HUGHES.

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In the Supreme Court of the United States.

OCTOBER TERM, 1898.

THE UNITED STATES, APPELLANT, v. RANLETT AND STONE. } No. 20.

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIFTH CIRCUIT.

SUPPLEMENTAL BRIEF FOR THE UNITED STATES.

The learned counsel for appellees, on page 2 of their brief at this hearing, say that the claim of free entry was based on a *strict* compliance with the regulations of the Treasury Department. We have endeavored to show that even if all the documentary evidence was submitted, including the exportation certificates, it was still necessary to show identity as of American manufacture, and whether upon reexamination or reappraisement—before the Board of General Appraisers or in court—the necessary evidence to establish this fact should have been produced by the importers, which was not done. The

case is not, as implied on page 40 of the opposing brief, that the door was open to the Government for the entrance of all expert witnesses who could be produced. This door stood open, rather, to the importers, but they did not seek to enter it.

This misconception as to the burden of proof vitiates entirely the opposing argument. But was there a strict compliance with the Treasury regulations? The record, unfortunately, does not show just what documents and certificates were presented by the importers, and, except by the importers' general assertions, whether in all the invoices the exportation certificates were produced or the customary bonds to produce them given instead, and whether, consequently, these bonds were canceled upon the production of the appropriate exportation certificates.

On pages 5 and 6 of the opposing brief, reference is made to a "pretended examination." Such language assumes an absence of good faith on the part of the examiner and appraiser. The record, page 29, shows that the examiner, to use his language, took "every method to try to be just" in the examination. Such language as "pretended examination," and the "going roughshod over the law," is without justification.

The brief in many places attempts to impugn the good faith of the Government officers. The reference to the appraisers and the collector as having "acted as though the principle that citizens can not be taxed on doubtful premises had been expunged from our jurisprudence" is like the above, and requires no answer.

On page 9 counsel say that in "some only" of the packages were foreign made-bags found by the customs

officers. This is not the fact. The record shows that from 75 to 86 per cent of the bags, as estimated by the examiner, were foreign. Furthermore, the examiner did not take a foreign bag from each bale that he examined, but in each of the bales he examined he said that he found foreign-made bags.

The action of the customs officers was not "arbitrary." They examined the bales carefully and in each of them found foreign-made bags. It was no more arbitrary to assess the bags as dutiable than it would have been to pass them free after foreign-made bags had been found. The latter course would have contravened a plain official duty.

The bags were returned as dutiable, the same as if they were composed exclusively of foreign-made bags, because they were entered by the importer as exclusively American bags, which, upon examination, they were found not to be. Until shown to be all American bags they were properly dutiable as foreign bags.

It was not the business of the examiner and appraiser to *absolutely* determine the fact whether the bags were foreign or not. Having determined that fact to the best of their judgment, it was for the importer to show that their view was mistaken, and not for them, acting as they were in a *quasi-judicial* capacity, to submit to the importer's proof in support of their finding as to the character of the bags. The whole argument of opposing counsel is based on the underlying assumption that the action of the examiner and the appraiser should be considered as though it had never been taken, and that the finding of

those officers was without any legal force or effect whatever.

The true rule is that into the statute which permits the free return of American-made bags must be read the requirement of the law that all merchandise upon its arrival in the United States must be examined by the examiner and appraiser to ascertain whether the facts in relation thereto, as represented by the importers, are correct or not. If this is not so, what purpose in the scheme of customs collection do these officers serve?

On page 12 reference is made to the "proof" submitted by the importers. There was no *proof* whatever. There was certain documentary evidence submitted in an attempt to prove that the thing imported was what upon an inspection of the thing itself it proved *not* to be. The importers stopped short of the requirements of the statutes in relation to proof of identity. The law reads into the statute and the regulations the requirement that the evidence submitted shall be borne out by the merchandise itself upon an inspection thereof. Otherwise there would be no use in examining the merchandise itself, but only of examining the evidence or documents presented by the importers in relation to it.

As to the reference to the analogy of a jury trial, on page 13, this was not in its nature at all like a jury trial, but was a statutory proceeding of a special character before specially qualified statutory officers and a statutory tribunal.

The examination was neither "imperfect" nor "illegal," as has been shown; nor made by incompetent officers without knowledge or experience, as the record

shows. It might be in the case of some particular selected bag that the examiner and appraiser could not tell definitely whether it was foreign or American, but the examination of the examiner (Rec., p. 32 et seq.) shows that his knowledge of the difference between American and foreign bags tested by material, stitch, selvedge, and general appearance, was superior to that of other witnesses examined.

Counsel say, on page 19, "the question here is not whether the bags were made of foreign material, but whether the material, foreign or domestic, was made up or manufactured into bags in this country." The statute provides for the free admission of "articles the growth, produce, and manufacture of the United States." The question whether bags made in the United States of foreign materials can be admitted free of duty in any proper case, or whether the statute applies only to bags manufactured wholly in the United States, is not material here; and besides if bags are made of imported foreign material they generally claim the drawback allowed by the statutes, whereupon they are not ordinarily admitted to free entry. There is no claim that these goods, although of foreign material, were manufactured in the United States. The claim in the entry is that they were all American-made bags exported from the United States and returned. The claim now is that if all were not American bags still duty should have been assessed upon such as were found to be foreign and the remainder admitted free.

As to the statutory proof (p. 29, last paragraph), it was not submitted until all of the facts necessary to en-

title the merchandise to free entry were established to the satisfaction of the examiner and appraiser. "It does not seem to have occurred" to opposing counsel that the evidence which they submitted was submitted for the express purpose of satisfying the appraiser and examiner, and was by them deemed insufficient. If those officers had any duty to perform it was to determine the sufficiency or insufficiency of this evidence. Having determined it to be insufficient they could not submit additional proof to themselves to change their views.

"The innocent importer" is not "taxed on mere presumption." As a matter of fact, when the examination disclosed foreign bags the presumption was at an end, and the bags were properly taxed. Even if not, however, the bags might be taxed upon a presumption, because it is presumed that all importations are liable to duty until they are shown to be within some exception to the rule. "The gross abuse of discretion practiced by the appraisers" consisted simply in their refusal to make a separation of the bags, which should have been done by the importers before entering.

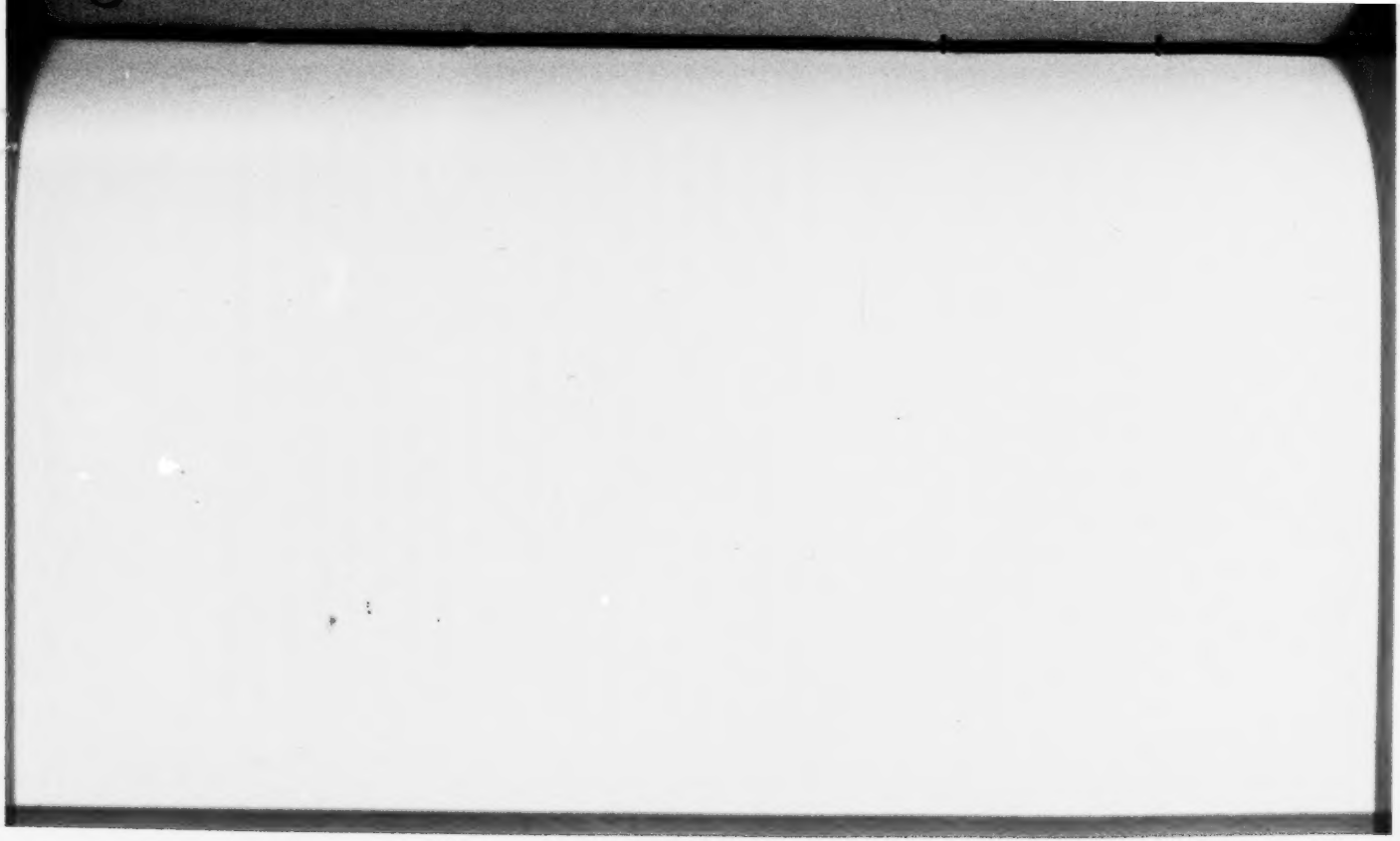
On pages 31 and 32 counsel state that by section 14912 the Treasury Department directed an examination of the legal number of packages and such examination of the contents as will reveal the character of the bags contained therein, and that the Department did not change this ruling and require the separation by the importers of the bags into packages of bags of foreign and domestic origin, respectively, until the month of April, 1898, or until the promulgation of section 18425, dated October 2, 1897. On the contrary, while the new regulation was

not finally announced until the date of the last-mentioned circular, the practice of the Department had long been in accordance with the new rule and had conformed to G. A. 2613, dated May 5, 1894 (preceding G. A. 2623, *in re* Ranlett & Stone), which required segregation by the importers from the same class of goods such portions as are claimed to be free, and therein reversed G. A. 2448, which held, in effect, that customs officials should do the work of separation.

Finally, it is submitted that while in the Treasury investigations it was matter of complaint by importers protesting against the methods obtaining that the examination in previous bag cases by the appraising force, under which the bags were passed free, was careless and insufficient from the Government standpoint, there was no complaint or criticism by other interested importers on this score until duty began to be assessed.

HENRY M. HOYT,
Assistant Attorney-General.

W. J. HUGHES.



No. 218. 20.

Brief of Semmes for Appellees

Filed Jan. 6, 1898.

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JAN 6 1898
JAMES H. McKENNEY,
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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1897.

No. 218.

THE UNITED STATES, APPELLANT,

versus

RANLETT & STONE, APPELLEES.

BRIEF FOR APPELLEES.

THOS. J. SEMMES,
Of Counsel for Appellees.

L. GRIMAN & SON, LTD., 44-48 BARONNE ST., NEW ORLEANS.

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1897.

No. 218.

THE UNITED STATES, APPELLANT,

versus

RANLETT & STONE, APPELLEES.

BRIEF FOR APPELLEES.

The case is simply this:

The importers of the empty grain bags purchased them in Liverpool under a guarantee that they were bags of American manufacture, shipped from the United States filled with the products thereof, and entitled to free entry on their return to the United States. There is no doubt that the importers acted in good faith, and that they complied with all the customs regulations, and furnished all the proofs required by those regulations to show that their importations were of bags free of duty.

Nevertheless an examination was made by an appraiser assisted by an examiner; this examination was not made in conformity with law or the regulations of the Treasury Department; neither the appraiser nor the examiner had any experience or knowledge of the matter in hand sufficient to be able to say with certainty of any one bag, that it was foreign or of American manufacture. The other witnesses called appeared to be no better informed. An examination of the

whole evidence shows that neither by the material, cotton selvage, the thread used, nor stitch—and these were all the marks referred to—could any one certainly tell a foreign-made bag from an American-made bag. In the judgment of the examiner and of two or three of the witnesses based upon what knowledge and experience they had, all the bales contained both bags of foreign manufacture and bags of American manufacture. In the opinion of the examiner, it was sufficient to find any foreign bags in a bale in order to make the whole bale liable for duty—a bale being, in the opinion of the examiner, a unit.

The questions presented are:

1. Did this imperfect examination made by inexperienced and ignorant officers, and not in conformity with law or the customs regulations, have the effect of overturning all the proofs furnished by the importers and required by the customs regulations?

2. If the examination had that effect, did the presence of some bags of foreign manufacture in a bale, subject all the bags in the bale to duty by virtue of the unit rule, established by Sec. 2910 of the Revised Statutes?

3. Whether the customs officers, in the absence of all fraud on the part of the importers, should not have complied with the request of the importers for a separation of the foreign-made bags from the American-made bags, so as to ascertain what proportion of bags in each bale was liable to duty.

Paragraph No. 493 of the Tariff Act of 1890 provides, that "bags of American manufacture exported filled with Ameri-"can products shall be free of duty; but proof of the iden-"tity of such articles shall be made under general regula-"tions, to be prescribed by the Secretary of the Treasury."

These regulations are set forth *in extenso* by the Circuit Court of Appeals, Second Circuit, in the Dominici case, 78 Fed. R. 335.

The Court will notice that the statute speaks only of regulations as to "identity." And on that subject the regulations are very complete.

Article 382 provides that before such entry—that is to say, entry of free bags—the following proofs shall be required:

1. A certificate from the shipper attested by the United States Consul, that the bags are truly of the manufacture of the United States, and were exported from the United States filled with grain, the product of that country, and that it is intended to reship the same empty to the port of New Orleans on board the ship Pallas, now lying in the port of Liverpool. I apply the regulations to one of the shipments in this case.

2. The consul is required to verify the facts alleged in the certificate as far as practicable.

3. The certificate may be accepted in lieu of an invoice for empty bags.

4. The importer must declare in his entry:

(*a*) The name of the exporting vessel.

(*b*) The date of the shipper's outward manifest.

(*c*) The marks and numbers on the bags.

The marks and numbers should be such as to prove beyond any reasonable doubt, the identity of the bags with those entered on the outward manifest.

(*d*) If the bags are returned to a port other than that from which they were exported, (these bags were exported from San Francisco) a copy of that portion of the outward manifest relating to the bags, certified by the Collector of Customs at the port whence they were exported, must be produced, as well as a certificate from the same officer, countersigned by the naval officer, if any, that he is satisfied no drawback or bounty has been paid thereon.

5. An affidavit must be made by the importer, (which affidavit must be attached to the entry) that no drawback or bounty has been allowed on the bags, and that to the best of his knowledge and belief the bags mentioned in the entry, are truly and *bona fide* manufactures of the United States or were exported therefrom filled with grain.

Ranlett & Stone, the importers, complied with all these regulations at the time they made their respective entries. That fact is stated in the first question.

The statutory proof of identity has been furnished. The examination relied on to overcome that proof was not made in conformity with law or the regulations of the department; it was made by an examiner who had no experience and no knowledge as to the manufacture of bags, and, in consequence thereof, is unable to say with certainty that any one of the bags was of foreign or of American manufacture (p. 3). Nor could any witness examined so state, nor could that fact be determined by any of the marks referred to by the witnesses—that is to say, by the material, the cotton selvage, the thread used, or the stitch.

This is not a question of the weight of evidence (for I consider the regulations of the department equivalent to a statute that certain proof of identity shall be furnished). Is not the importer entitled to the benefit of that proof, unless a case of fraud or mistake is made out against him? In the Dominici case, 78 Fed. Rep. 338, it was held that when "a mode of proof is prescribed by the terms of the law or by its fair interpretation no other than the statutory evidence can be admitted." The Court cites Dutihl vs. Maxwell, 2 Blatchf. 541, in support of the proposition. "When a statute limits a thing to be done in a particular mode, it includes a negative of any other mode." R. R. vs. Reid, 13 Wall. 270.

The importer has established by the statutory proof, that the bags are entitled to free entry as American-made bags. The affirmative imposed on the importers has been sustained in the manner prescribed by law. Suppose this case had been tried by a jury, and the importers, having introduced the statutory proof of identity of the bags imported with those exported, had rested, and then the government administered proof such as that here described, the result of an illegal and an imperfect examination, made by incompetent officers, without knowledge or experience, who admitted they could not with certainty say of any bag, that it was of foreign or domestic manufacture; would it not have been the duty of the presiding judge to instruct the jury to find a verdict for the importers?

It is now well settled that the question for the judge in such case is not whether there is literally no evidence, but whether there is any that might reasonably satisfy the jury that the fact sought to be found is established.

Ryder vs. Wombell, L. R. 4 Exch. 38.

"Before the evidence is left to the jury there is, or may be, in every case a preliminary question for the judge, not whether there is literally no evidence, but whether there is any upon which a jury can properly proceed to find a verdict for the party producing it, upon whom the burden of proof is imposed."

Commissioners vs. Clark, 94 U. S. 284.

Improvement Company vs. Munson, 14 Wall. 448.

Dwight vs. Pearman Co., 103 N. Y. 359.

Second Question.

If the first question be answered, as we submit it should be, the second and third questions become immaterial, and require no answer. The appraisers, however, decided that the presence of some bags of foreign manufacture in a bale subjected to duty all the bags in the bale. This they called the application of the unit rule established by Sec. 2910 of the Revised Statutes.

The section referred to is as follows:

"When merchandise of the same material or description, but *of different value*, is invoiced at one *average price*, and not otherwise provided for, the duty should be assessed upon the *whole invoice* at the *rate* at which the *highest valued* goods in such invoice are subject."

Section 2911 provides: "Whenever articles composed wholly or in part of wool or cotton of similar kind but different *quality* are found in the same *package*, charged at an *average* price, it shall be the duty of the appraiser to adopt the *value* of the best article contained in such package and, so charged, as the *average value* of the whole."

Section 2912: "When wool of different qualities is im-

ported in the same bale, bag, or package, it should be appraised by the appraiser, to determine the *rate of duty* to which it shall be subjected at the *average aggregate value* of the contents of the bale, bag or package, and when bales of *different quality* are embraced in the *same invoice*, at the same price, whereby the average price shall be reduced more than ten per centum below the value of the bale of the *best quality*, the value of the whole shall be appraised according to *the value* of the bale of the best quality; and no bale, bag, or package shall be liable to a less rate of duty in consequence of being invoiced with wool of lower value."

It is true Secs. 2911 and 2912 apply exclusively to wool, but they are valuable as indications of the intention of Congress as expressed in Sec. 2910.

Paragraph 365 of the tariff act of 1890 imposes a specific duty of *two cents* per pound on bags of grain made of burlaps, without regard to *quality* or value.

It is manifest that Secs. 2910, 2911 and 2912 of the Revised Statutes prescribe a rule for the ascertainment of the *value* of goods of the same material, but of different quality and of different values in the same package or in the same invoice. The prescribed rule is applicable only in cases where the duties are assessed according to value; it can have no application to merchandise subjected to specific duties per pound irrespective of value or quality.

Section 2911 applies to articles of wool of different qualities found in the same *package* charged at an *average price;* but Sec. 2910 refers to merchandise of the same material or description of *different values, invoiced at an average price and not otherwise prescribed for.* In that case the duty is to be assessed on the whole *invoice*—not *package*—at the rate to which the highest valued goods in *such invoice* are subject. An invoice may contain any number of packages and the rule prescribed in Sec. 2910 can be invoked only where it is necessary to fix *a value and a rate.* In this case *value* is of no consequence and the rate is fixed at two cents per pound. But the rule does not apply to cases *otherwise provided for.* Hence, when the law provides that a portion of the packages or in-

voice shall be free of duty, this section does not authorize the assessment of a tax on a free article.

The rule is different as to tobacco under paragraph 242 of the act of 1890, which provides that if any portion of any tobacco imported in a bale shall be suitable for cigar wrappers the entire quantity of tobacco in the bale shall be dutiable under that paragraph.

Stackelburg vs. United States, 72 Fed. R. 50.

Third Question.

Whether the presence of foreign-made bags in a bale imported as composed of American-made bags, the foreign-made bags being indiscriminately mixed in the bale with the American-made bags without the knowledge of the importer, with no intention on his part, or on the part of the vendor or shipper, to conceal the dutiable bags by mingling them with others free of duty, subjects the whole bale to duty, because the importer who has complied with all the regulations prescribed by the Secretary of the Treasury as to the character of his importation, fails to separate and designate the American-made bags which he claims to be free of duty, and although the importer requests the customs officers to make such separation, and to endorse on the invoice returned by them the percentage of American-made and foreign-made bags in such bale, which request is refused by the officers on the ground that they could not and would not make such separation because it necessitated the going through the bale bag by bag to ascertain the percentage.

The government itself admits that there is no provision of law to prevent the importation of both free and dutiable bags baled together, and that the difficulty can be overcome only by an examination of the legal number of packages, and such number of the contents of said packages as will reveal the character of bags contained therein; and that the finding of the appraisers, as to the proportion of foreign bags contained in the bale, was to be adopted as the basis for

the assessment of duty on the bales not examined, and this was the decision of the Board of General Appraisers of New York referred to in the letter of the Treasury Department, dated 27th April, 1894, addressed to the collector of this port, of which the following is a copy:

(14,912.)

ASCERTAINMENT OF ORIGIN OF RETURNED EMPTY BAGS.

TREASURY DEPARTMENT, April 27, 1894.

Sir—Referring to your letter of the 16th of February last, relative to the difficulty of ascertaining the origin of returned empty bags claimed to be exempt from duty under the provisions of paragraph 493 of the act of October 1, 1890, I enclose herewith a copy of a report received from the Collector of Customs at New York, under date of the 28th ultimo, in which he expresses the opinion that there is "no way out of the difficulty, under the law, *except by an examination of the legal number of packages, and such an examination of the contents of said packages as will reveal the character of the bags contained therein*, and the finding of the appraiser to be the basis for the assessment of duty on the bales not examined."

In the absence of any provision of law to prevent the importation of both free and dutiable second-hand bags baled together, and in view of the recent decision of the Board of General Appraisers, referred to by you and by the Collector of New York, in the case of certain second-hand bags on which duty was paid under protest, the department, as at present advised, concurs with that officer in the above-cited opinion, and you are hereby authorized to follow at your port the course adopted at New York in regard to similar importations.

Respectfully yours,

CHARLES S. HAMLIN,
Assistant Secretary.

(5152 g.)
Collector of Customs, New Orleans, La.

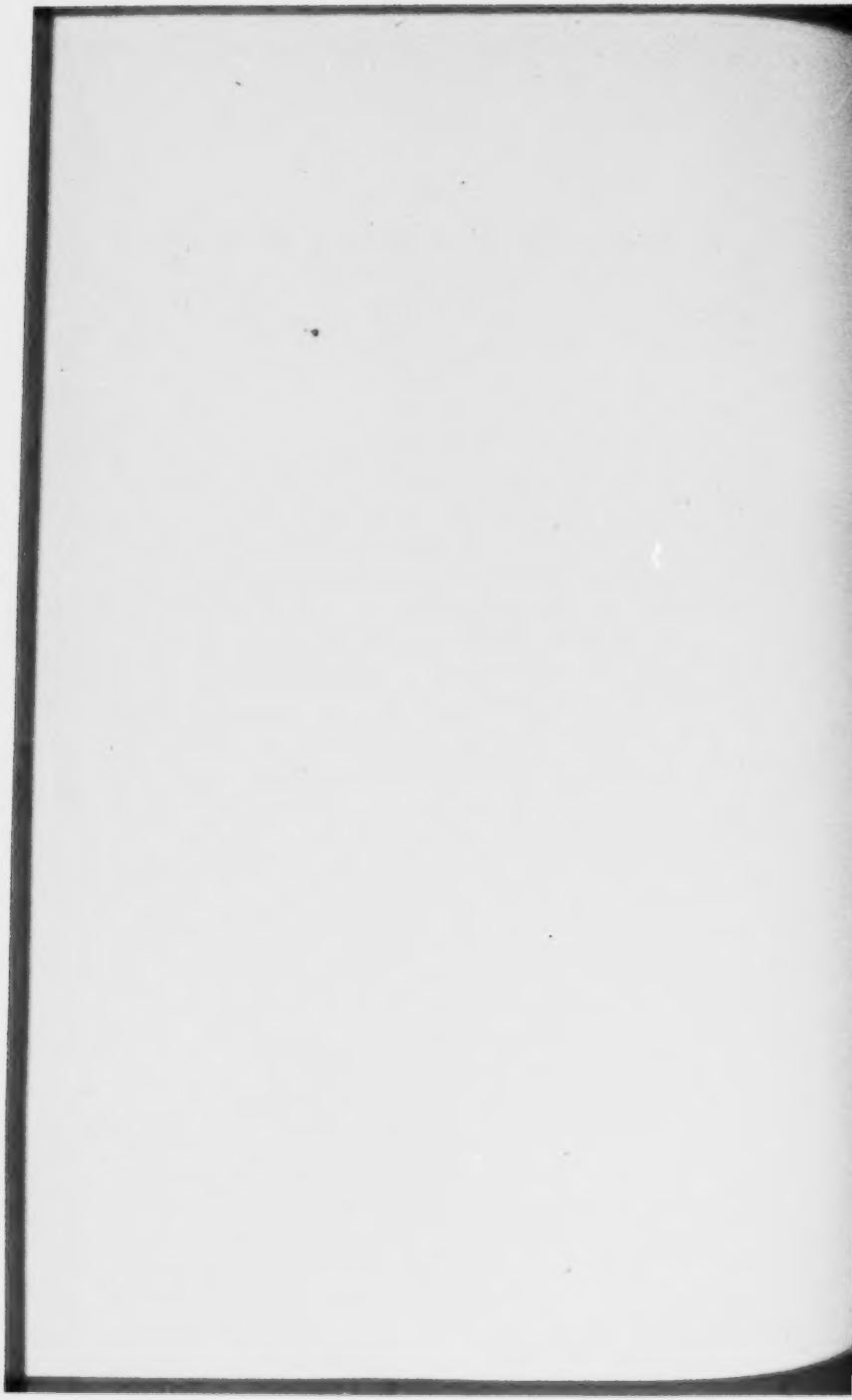
This letter prescribes the course that should have been pursued, and that is that an examination of the legal number of packages should have been made; said examination would have revealed the character of the bags contained therein; the proportion of foreign bags in each bale would have been ascertained, and that proportion could have been adopted as the basis for the assessment of duty.

The importers requested the customs officers to pursue this course; the request was refused on the ground that the proportion of foreign-made bags in the bales could not be ascertained without going through the bales bag by bag.

These examiners proposed to escape labor by inflicting on the importer the payment of duties on that portion of his importation which was declared by law to be exempt from duty.

Respectfully submitted,

THOS. J. SEMMES,
Of Counsel for Appellees.



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Supreme Court of the United States.

OCTOBER TERM, 1897.

No. 218.

THE UNITED STATES, APPELLANT,

vs.

RANLETT & STONE.

On a Certificate from the United States Circuit Court of Appeals for the Fifth Circuit.

WM. A. MAURY,
Of Counsel for Appellees.

JUDD & DETWEILER, PRINTERS, WASHINGTON, D. C. 4-19-'98

IN THE

Supreme Court of the United States.

OCTOBER TERM, 1897.

No. 218.

THE UNITED STATES, APPELLANT,

vs.

RANLETT & STONE.

On a Certificate from the United States Circuit Court of Appeals for the Fifth Circuit.

This case is certified here for answer to several questions arising upon the following state of facts:

In the latter part of 1893 and in January, 1894, the appellees, Ranlett & Stone, as owners, made several importations from Liverpool, England, through the port of New Orleans, of large numbers of bags, in bales, made of jute and commonly known as cental bags.

These bags were purchased by the appellees under a guarantee that they were bags of American manufacture, shipped from the United States filled with the products thereof, and entitled to free entry on their return to the United States.

Accordingly, each of the said importations was admitted to free entry, but afterwards, upon examination of the

"samples" sent to the appraiser's store, it was reported as to each importation that the packages in which the said merchandise was imported contained some bags of foreign manufacture which were dutiable; whereupon the collector made an impost entry, covering the *whole* consignment, and assessed duty thereon at the rate of 2 cents per pound. The appellees paid the duty, thus assessed, protesting as to each exaction on the following grounds:

(1.) That the merchandise was entitled to free entry under paragraph 493 of the free list of the act of October 1, 1890, as bags of American manufacture exported filled with American products.

(2.) That, failing the first ground, the merchandise was entitled to be entered free under section 7 of the act of February 8, 1875, providing that bags other than of American manufacture in which grain shall have been actually exported from the United States may be returned empty to the United States free of duty, the claim being that section 7 of the act of 1875 is unrepealed, and that the Treasury regulations with reference to the said provision are still in force.

(3.) That the goods were not fairly and faithfully examined by the appraisers, and that the assessment of two (2) cents per pound on the entire contents of the packages on the ground that they were found, in the opinion of the appraiser, to contain a mixture of foreign with American bags was incorrect, and the goods being all of one value, whether of foreign or American make, do not come under the provisions of section 2910 of the Revised Statutes. (R., pp. 1, 2.)

The importers also appealed from the collector's decision to the Board of General Appraisers, where, after certain perfunctory proceedings, which, as will be shown further on, it would be an abuse of speech to call an examination or investigation, the ruling of the collector was affirmed.

From the decision of the Board the importers appealed to the Circuit Court of the United States for the eastern district of Louisiana, where, after proper investigation, it was decreed that "the examination heretofore made of said bales of bags is *void and not in conformity to law or the regulations of the Treasury Department, and any liquidation of duties based on said examination is illegal and void, and the liquidation of duties heretofore made be set aside*, and the money received from Ranlett & Stone as duties be refunded as aforesaid, and the Court doth further order and decree that the Collector direct a re-examination to reliquidate the duties which may be lawfully due thereon." (R., pp. 3, 4.)

From this decree the United States appealed to the Circuit Court of Appeals, where the cause came on to be heard and was argued; but the Court, desiring the instruction of this Court before entering a decree, certified the following questions:

> 1st. Whether the returns of the appraiser that the several importations of Ranlett & Stone contained bags of foreign manufacture based on an examination not in conformity with law or the regulations of the Treasury Department had the effect of overthrowing the *prima facie* case made by the importers who were without fraud in the premises, and who had furnished all the proofs required by the customs regulations, to show that their importations were of bags free of duty?
>
> 2d. Whether the presence of some bags of foreign manufacture in a bale imported as composed of American-made bags free of duty subjects to duty all the bags in the bale by virtue of the unit

rule established by section 2910 of the Revised Statutes or by the general rules of law applicable to the case?

3d. Whether the presence of foreign-made bags in a bale imported as composed of American-made bags, the foreign-made bags being indiscriminately mixed in the bale with the American-made bags without the knowledge of the importer and with no intention on his part or on the part of the vendor and shipper to conceal the dutiable bags by mingling them with others free of duty, subjects the whole bale to duty, because the importer who has complied with all the regulations prescribed by the Secretary of the Treasury as to the character of his importation fails to separate and designate the American-made bags, which he claims to be free of duty, and although the importer requests the customs officers to make such separation and to endorse on the invoices returned by them the percentage of American-made and foreign-made bags in each bale, which request is refused by the officers on the ground that they could not and would not make such separation because it necessitated the going through the bales bag by bag to ascertain the percentage?

ARGUMENT.

Aside from the consideration that these questions have been certified, it may be remarked, that their settlement by this Court will be of real utility to the commerce of the country, which has been vexed, in the matters certified, by the vacillations of those charged with the administration of the tariff.

We think, that it will be convenient to discuss the questions together.

While it is true, that the appraisers are invested by law with a discretion which cannot be invaded by the courts, it is equally true, that this discretion must be exercised within certain limitations ascertained by law, and that any excess of those limitations may be corrected by the courts, as may also any *abuse* of discretion.

The case at bar presents a clear abuse of the authority

and discretion vested in the appraisers and the collector, who seem to have acted as though the principle that the citizen cannot be taxed on doubtful premises had been expunged from our jurisprudence.

It is conceded, on the other hand, that the appellees have acted in good faith, and fully complied with the requirements of paragraph 493 of the tariff act of October 1, 1890, and of the Treasury regulations made thereunder as to proof, in order to entitle themselves to free entry of their merchandise.

The requirement of paragraph 493 is, that "*proof of the identity of such articles shall be made, under general regulations to be prescribed by the Secretary of the Treasury,*" and the regulations made pursuant to this provision are set out on pages 3–5 of Appellant's brief.

The packages of the several importations being invoiced and entered to contain bags of American manufacture, and the importers being ignorant of anything to the contrary, as is conceded, it was arbitrary in the customs officials to take the ground that the presence of foreign-made bags *in some only* of the packages of each importation detained by them for examination, rendered the *whole importation dutiable as one of foreign-made bags, exclusively.* And it was an aggravation of this proceeding, that it was entered upon without using the proper means to ascertain whether the bags *suspected* to be foreign-made were in fact such or not.

The appellees, having furnished the evidence required to entitle their merchandise to free entry, had the right to stand on that evidence until dislodged from the position by preponderating evidence on the part of the government. But the evidence to impeach the invoices and entries, so far

from being preponderating, *was not even sufficient to raise a rational doubt.*

That no injustice may be done these officials, we give the facts, as found by the Circuit Court of Appeals, with reference to what took place on the appeal to the Board of General Appraisers:

> From the decision of the collector an appeal was taken to the Board of General Appraisers. Upon the appeal evidence was taken showing the facts so far recited, and in addition as follows: That of the entry, ex SS "Engineer," of 600 bales, 70 *were ordered to the appraiser's store, and* 18 *of that number were opened* by the appraiser; ex SS "Legislator," 650 bales, 43 *were ordered to the appraiser's store, and of that number* 19 *were opened by the appraiser;* ex SS "Vesta" of 325 bales, 38 *were ordered to the appraiser's store,* 13 *of which were opened by the appraiser;* ex SS "Assaye" of 850 bales, 85 *were ordered to the appraiser's store,* 16 *of which were opened by the appraiser;* ex SS "Traveller" of 300 bales, 21 *were ordered to the appraiser's store,* 14 *of which were opened by the appraiser;* ex SS "Pallas" of 100 bales, 100 *were ordered to the appraiser's store, of which* 10 *were opened by the appraiser;* and ex SS "Engineer" of 100 bales, 100 *were ordered to the appraiser's store, of which* 10 *were opened by the appraiser;* that neither the appraiser nor examiner who assisted in the examination of the bales opened at the appraiser's store *had any experience or knowledge of the matter in hand sufficient to be able to say with certainty of any one bag that it was of foreign or of American manufacture. The other witnesses called appeared to be no better informed. An examination of the whole evidence shows that neither by the material, cotton selvedge, the thread used, nor stitch—and these were all the marks referred to—could any one certainly tell a foreign-made bag from an American-made bag.* In the judgment of the examiner and of two or three of the witnesses, *based upon what knowledge and experience they had,* all the bales examined contained both bags of foreign manufacture and bags of American manufacture. In the opinion of the examiner it was sufficient to find any foreign bags in any bale in order to make the whole bale liable for duty—a bale being in the opinion of the examiner a unit.
>
> The Board of General Appraisers, in an opinion rendered (Synopsis of Decisions, 15070; G. A., 2623), held that the burden of proof was on the appellants to show that the goods were bags of American manufacture within the meaning of paragraph 493, tariff act of 1890; that if bags chargeable with duty and bags of Amer-

ican manufacture entitled to be entered free of duty were contained in the same package it was the duty of the importer to separate and designate such merchandise and accompany the same with the evidence required by law, *otherwise the unit rule would prevail and the whole package be charged as dutiable;* that the provisions of the acts of February 8, 1875, and of March 3, 1883, under which alternative claims were made, are no longer in force; and that the decisions of the collector of the port of New Orleans were correct. (Italics our own.) (R., pp. 2, 3.)

This decision bears date on May 21, 1894, but, strange to relate, contains no reference to a previous decision of the Board of Appraisers or the following Treasury circular based thereon, dated April 27, 1894, completely repudiating the so-called unit rule:

(14,912.)

ASCERTAINMENT OF ORIGIN OF RETURNED EMPTY BAGS.

TREASURY DEPARTMENT, *April* 27, 1894.

SIR—Referring to your letter of the 16th of February last, relative to the difficulty of ascertaining the origin of returned empty bags claimed to be exempt from duty under the provisions of paragraph 493 of the Act of October 1, 1890, I enclose herewith a copy of a report received from the Collector of Customs at New York, under date of the 28th ultimo, in which he expresses the opinion that there is "no way out of the difficulty, under the law, *except by an examination of the legal number of packages, and such an examination of the contents of said packages as will reveal the character of the bags contained therein*, and the finding of the appraiser to be the basis for the assessment of duty on the bales not examined."

In the absence of any provision of law to prevent the importation of both free and dutiable second-hand bags baled together, and *in view of the recent decision of the Board of General Appraisers*, referred to by you and by the Collector of New York, in the case of certain second-hand bags on which duty was paid under protest, the department, as at present advised, concurs with that officer in the above-cited opinion, and you are hereby authorized to follow at your port the course adopted at New York in regard to similar importations.

Respectfully yours, CHARLES S. HAMLIN,
Assistant Secretary.

(5152 g.)
Collector of Customs, New Orleans, La.

What is more, this circular continued to be the rule of administration *until this current month of April, 1898*, when a new rule, requiring importers to pack separately bags of foreign and domestic origin, was introduced by the following Treasury circular:

(18425.)

RETURNED EMPTY FOREIGN AND DOMESTIC BAGS MUST BE PACKED SEPARATELY ON AND AFTER APRIL 1, 1898.

TREASURY DEPARTMENT, *October* 2, 1897.

SIR: In reply to your letter of the 21st ultimo, concerning the examination of returned empty bags, you are informed that in the future importers of such bags will be required to have the bags of foreign and domestic origin packed separately in order that their character may be readily determined upon examination at the appraiser's stores.

With the view, however, of allowing importers sufficient time to comply with this requirement, the regulations of April 27, 1894 (Synopsis 14912), which require "an examination of the legal number of packages, and such an examination of the contents of said packages as will reveal the character of the bags contained therein; and the finding of the appraiser to be the basis for the assessment of duty on the bales not examined," now in force, will be continued for a period of six months from the 1st instant.

Respectfully yours, W. B. HOWELL,
Assistant Secretary.

(7366 *h.*)
Collector of Customs, New York, N. Y.

The findings of the Court plainly show a dereliction of duty, in the failure to open and examine all the packages sent to the appraiser's store by the collector. To what end does section 2901, Revised Statutes, direct that "the collector shall designate on the invoice at least one package of every invoice, and one package at least of every ten packages of merchandise, *and a greater number should he or either of the appraisers deem it necessary*, imported into such port, *to be*

opened, examined, and *appraised,* and shall order the package so designated to the public stores *for examination,*" * * * if the appraisers can open and examine them or not, *at their pleasure?* It is significant that the statute contemplates an occasional necessity for examination *of more than the usual number of packages,* thus emphasizing the requirement that the prescribed number, at least, shall be faithfully opened and examined.

In Oelbermann *vs.* Merritt (123 U. S., 356), this Court held that the importer had the right to show that the appraisers had not examined *all* the packages sent to them for that purpose, on the ground that a failure, in that particular, to carry out the directions of section 2901, Revised Statutes, would render the appraisement *void.* The same view was taken by this Court in the previous case of Converse *vs.* Burgess (18 How., 413), in which the court takes occasion to say:

> These acts of Congress provide for the appointment, regulate the duties, and impose the limitations on the authority of the appraisers, and determine the conditions on which the validity of their assessment depends. All their powers are derived from these acts, and it is their duty to observe the restrictions, and to obey the directions they contain. In the present instance, there was a neglect of the positive mandate "to open, examine, and appraise one package of every invoice, and one package, at least, of every ten packages of goods, wares, and merchandise;" and the jury have found, that the inquiry they made was not, in substance nor in effect, an equivalent for such an examination, (p. 416).

In the case of Robertson *vs.* Frank Brothers Co. (132 U. S. 17, 24), the Court reaffirm the principle, in this language:

> If the appraiser proceed upon a wrong principle, contrary to law, and this be made to appear, his appraisement is not unimpeachable.

It was also held in Oelbermann *vs.* Merritt (*supra*), that the importer could show, for the purpose of invalidating an appraisement, that a merchant appraiser who took part in the appraisement had no acquaintance with the merchandise appraised, the law requiring him to be "discreet and experienced." The Court say:

> If the merchant appraiser does not possess these qualifications, he has no power conferred on him by the statute to act as a merchant appraiser.

It is true, these cases relate to abuses of power and discretion by appraisers in the valuation of merchandise, but it is not perceived that the principles they lay down are inapplicable to abuses of power by appraisers in the classification of merchandise. In both cases, a failure to observe the directions and limitations of the law renders null whatever is done.

Under the old law the merchant appraiser was *both judge and witness*, but under the new law, the customs administrative act of June 10, 1890, appraisement by merchant appraisers is abolished and all appraisements and classifications are made by *officers* appointed for that purpose. The experience which these official appraisers must frequently lack with reference to merchandise submitted to them, whether for appraisement or for classification, must be supplied by the testimony of persons who have the requisite experience. It was therefore their duty in this case to resort to such testimony, failing which the original entry should have been allowed to stand upon the official evidence on which it was made.

But supposing, for the sake of argument, that the presence of foreign-made bags in the packages examined was

established, it was *purely arbitrary* to assess duty on all the importations to which such packages belonged, as consisting *wholly* of foreign-made bags.

In order to give a color of legality to this proceeding, and especially to escape the exertion of going through each of the importations, package by package, the customs officials fell back on what they termed "*the unit rule*," meaning the rule prescribed by section 2910 Revised Statutes, namely:

> When merchandise of the same material or description, but of different values, is invoiced at an average price, and not otherwise provided for, the duty shall be assessed upon the whole invoice at the rate to which the highest valued goods in such invoice are subject.

The idea of bringing the importations in this case within that provision was strained and far-fetched,—a mere labor-saving shift. In the first place, the section has exclusive reference to *ad valorem* duties, whereas the duty assessed here was a specific duty of two cents per pound. In the second place, the section relates to cases where "merchandise of the same material or description *but of different values, is invoiced at an average price*, and *not otherwise provided for*." In this case there are no different values of the same material invoiced at an average price in any one of the several invoices. In the third place, the merchandise in these consignments *is* otherwise provided for in the tariff. In a word, the case is a clear one of wrenching a statute from its obvious sense in order to justify an illegal exaction.

It is remarkable that this forced and oppressive "*unit rule*" should have been applied by the customs officials, when Congress had furnished a provision which was exactly

adapted to the case. In section 2901, Revised Statutes, is to be found the following:

> If any package be found by the appraisers to contain any article not specified in the invoice, and they or a majority of them shall be of opinion that such article was omitted in the invoice with fraudulent intent on the part of the shipper, owner, or agent, the contents of the entire package in which the article may be, shall be liable to seizure and forfeiture on conviction thereof before any court of competent jurisdiction; *but if the appraisers shall be of opinion that no such fraudulent intent existed, then the value of such article shall be added to the entry, and the duties thereon paid accordingly, and the same shall be delivered to the importer, agent, or consignee.*

There being no pretense of fraud in the invoices or entries, the presence of foreign-made bags in the packages examined, if proved, was *as lawful as though such bags had been invoiced and entered.* It was, therefore, plainly oppressive to treat the importers as *delinquent*, by applying to them the arbitrary "*unit rule.*" Section 2901 gives no countenance to any such proceeding. Indeed, the section refers to unspecified articles "*found by the appraisers*" in "*any package*," but it will hardly be contended that the appraisers "found" bags of foreign manufacture in the packages which were not even opened by them.

To presume, from the *accidental* presence of bags of foreign manufacture in some of the packages, that they were present in all the packages, is entirely at war with the indulgence extended by section 2901 to the importer who acts in good faith.

That section, in prescribing how many packages shall be sent to the appraisers for examination, contains the significant provision that these officers may call for a "*greater number*," and article 832 of the Treasury Regulations provides, that where "merchandise in the package varies in

quantity or in character from the specifications in the invoice or that the merchandise is invoiced below its foreign market value" the appraiser may, "if necessary, request that the *remaining packages contained in the invoice be submitted for examination in detail.*"

Now, if in such cases of *gross delinquency* the so-called "*unit rule*" is not applicable, *a fortiori* it is not applicable to a case like the present, where it is conceded there was no fraud or negligence on the part of either the vendor and shipper or the importers, and where the customs officers were requested by the importers to separate and designate the American-made bags and refused to do so.

What, now, do these provisions mean, if not, that the importer cannot be taxed except upon *established facts*, arrived at by a faithful examination of *all* the packages covered by the importation, if such detailed examination be necessary? It is monstrous to say, that the innocent importer can be taxed on mere presumption, in a case like the present, where, it is conceded by the Treasury, there is no law forbidding the importation of domestic and foreign made bags in the same package.

The position taken by the appraisers that "*it was the duty of the importer to separate and designate such merchandise and accompany the same with the evidence required by law*" (R., p. 3) was unreasonable, to the last degree. How could he be expected to "separate and designate" the so-called foreign-made bags, when their presence in the packages was *unknown* to him? How could he be expected to be ready with evidence to prove what he did not know to exist? When the so-called discovery of the presence of bags of foreign manufacture was made, all the packages were *in custodia legis*, and

none but an official examination of them was permissible. Nor do we understand that the results of an examination of the packages by the importers, after delivery to them, could have been accepted as a basis for the liquidation of the several entries. On the contrary, Treasury Regulation 829 expressly forbids *any examination* at the residence of the importer, or "at any other unusual place," except where "the articles are of a very fragile character or are imported for the personal use of the importer and not as merchandise, or when they might be exposed to injury by being opened, examined, and repacked at the appraiser's store," and then only by "*special permission*" from the collector with the approval of the appraiser, such permission to be given by "the collector in person, or, in his absence, by his special deputy." * * *

It is clear, therefore, that the appraisers' requirement of *separation and designation* by the importers was, in the nature of things, an *impossibility*, and that the importers' request, that the customs officers would make such separation, and endorse on the invoices returned by them the percentage of American-made and foreign-made bags in each bale, was both reasonable and proper.

The question of classification of an imported article is one of law, and under the control of the Courts, and it being a concession in the case that the packages of the several consignments contained only a small percentage of bags of foreign make, it was clearly error to classify the whole of each consignment as "bags for grain made of burlaps" dutiable under paragraph 365, of the Tariff of 1890.

THE BRIEF FOR THE GOVERNMENT.

The late hour at which the brief for the Government reaches our hands is not favorable to a satisfactory notice of it, at this time.

It is significant, that the learned counsel for the Government, finding no footing in the certificate of the Court of Appeals, is driven to the extreme course of impeaching, by a side wind, the correctness of the statement of facts in the certificate.

The particular attention of the Attorney General was directed to this case many months ago, when he applied for its advancement. If, now, the certificate of the Court of Appeals is open to the criticism made in the brief, it is somewhat strange that the Attorney General did not promptly apply to this Court for a *certiorari*.

Manifestly, the questions certified must be considered and decided upon the statement of facts in the certificate supporting them. This Court will not look outside the certificate for the purpose of investigating whether the ultimate facts certified are properly deduced from the evidence, or not. For all the purposes of the case, the findings certified are as binding on this Court as a special verdict would have been.

To adopt the view of the learned counsel for the Government would be to turn this proceeding into an appeal, in violation of section 6 of the Act of March 3, 1891, which denies an appeal to this Court in any such case.

This Court having repeatedly held, as above shown, that the duty of appraisers to examine all the packages sent to them by the collector, under section 2901, Revised Statutes,

is *mandatory* (Converse *vs.* Burgess, 18 How., 413, Oelbermann *vs.* Merritt, 123 U. S., 356, Robertson *vs.* Frank Brothers Co., 132 U. S., 17, 24,) it is unnecessary to combat by argument the converse of that position advanced in the opposite brief (pp. 11–13).

Of a piece with the contention just noticed, is the position that, in the face of the gross abuse of discretion practised by the appraisers, the results of their so-called examinations as to the country of origin of the several importations of bags may be eked out and validated by the presumption that official acts are duly performed. Need we do more than say, in reply, that an officer, justifying a seizure of a citizen's property to satisfy a tax, must show affirmatively and beyond doubt that every step required by law to validate the proceeding has been taken? The same principle applies to a suit by Government to recover a tax.

To build an argument on the supposed general fitness and qualifications of the appraisers alone is as much as to say that, in a case where their experience and knowledge were plainly not adequate, it was possible for them to make a valid classification of merchandise without calling to their assistance persons who had the adequate knowledge and experience.

It being the conceded right of the citizen to import American and foreign-made bags knowingly in the same bales, without separation, how is it possible for the customs officers to deprive him of the right to free entry of the American-made bags *upon a mere arbitrary assumption?*

In the case at bar the importer believed that the contents of the bales of each importation were bags of American origin, and he adduced the prescribed legal proof that they

were such. Surely the proof thus adduced must stand until legal evidence, of some kind, to the contrary is produced by the Government.

There being nothing to impeach the verity of the importer's proof, but, on the contrary, much to sustain it, was he not entitled to stand on that proof and insist that the merchandise should be entered free?

It is sought to belittle the statutory proof filed by the appellees, but it is apparent, from a decision of the General Appraisers to be found in the Government's brief (p. 41), that such evidence is entitled to weight. They say:

> We know that *grain bags* are emptied of their contents on the docks in a foreign country, *and they may, therefore, be assembled and identified;* but in the case of *flour bags*, which are the subject of this inquiry, we know that they follow their contents into the interior, *and are widely dispersed*, and it would seem contrary to reason to believe that they are again gathered together to any considerable extent. In this case we are asked to give credence to the theory that 19,315 flour bags exported by one vessel, 12,524 by another, and 18,100 by a third were reassembled so as to re-enter the United States in lots composed of their original associates.

We insist, that the citizen is not to be taxed on doubtful premises. If the law under which a tax is levied does not furnish clear authority for the imposition, the levy is without warrant. "*Duties are never imposed on the citizen upon vague or doubtful interpretations*" (Hartranft *vs.* Wiegmann, 121 U. S., 609, 616). So we insist, that when the evidence to countervail the importer's statutory proof as to the origin of bags imported as American is "*vague or doubtful*," as it unquestionably is here, to say the very least of it, how can a basis for exacting the tax on foreign-made bags be said to exist? So far from it, the action of the customs officials was a

flagrant violation of the principle laid down in the case just cited.

It is impossible to read the statement in the certificate of the proceedings before the appraisers in this case without feeling that they bring reproach on the administration of the customs laws. Surely the courts should exercise close vigilance in every case where the citizen complains of abuse of power by those concerned in the enforcement of revenue laws.

The argument advanced to bring this case under section 2910 is, we think, far fetched. That section, as we have shown above, has no application to the conditions existing here. It is unnecessary to repeat our discussion to establish that position, further than to say, that it is impossible to stretch and strain a harsh tax law, so as to make it reach cases not within its language, by any process of reasoning known to the law. That the learned counsel for the Government has not succeeded in the attempt, shows that the end sought is an impossibility under existing principles.

The unit rule of section 2910 applies only to aggregations in one package, *designedly* made, but in the case at bar the presence of foreign-made bags, if any, was accidental.

This is no such case as an importation of a mixture of anthracite and bituminous coal, where separation is practically *impossible*, and where there may be some reason for holding that the importer has *designedly* produced a condition of things which has given a dutiable character to the whole mass as bituminous coal, and deprived the other component of the right to free entry. In that way, alone, can the Government tax be saved.

But to visit a similar penal consequence upon a whole

importation of bags invoiced as of American origin, because of the *confessedly accidental presence* in *some* of the packages of bags of foreign manufact e is abhorrent to justice; and hence section 2901, Revised Statutes, was framed to meet just such a case, and temper the severity of the law.

If the views above presented are sound, it follows that the questions certified should be answered in the *negative.*

WM. A. MAURY,

Of Counsel for Appellees with Hon. Thos. J. Semmes.

WASHINGTON, D. C., 1505 *Pa. Ave.*

IN THE

Supreme Court of the United States.

OCTOBER TERM, 1898.

No. 20.

THE UNITED STATES, APPELLANT,

vs.

RANLETT & STONE.

On Writ of Certiorari to the United States Circuit Court of Appeals for the Fifth Circuit.

This case, originally here on a certificate from the Circuit Court of Appeals for the fifth circuit, was argued on the questions certified, and thereupon, by order of this Court, the whole record was brought here by certiorari, to be decided in the same manner as if it were here for review by appeal.

The facts as disclosed by the record are as follows: In the latter part of 1893 and in January, 1894, the appellees, Ranlett & Stone, as owners, made several importations from Liverpool, England, through the port of New Orleans, of

large numbers of bags, in bales, made of jute and commonly known as cental bags.

These bags were purchased by the appellees under a guarantee that they were bags of American manufacture, shipped from the United States filled with the products thereof, and entitled to free entry on their return to the United States.

All the invoices were admitted to free entry under Par. 493 of the tariff act of October 1, 1890 (26 Stat., 567–603), as bags of American manufacture exported from the United States filled with the products thereof. Par. 493 is as follows:

> Articles the growth, produce and manufacture of the United States, when returned after having been exported, without having been advanced in value or improved in condition by any process of manufacture, or other means; casks, barrels, carboys, bags, and other vessels of American manufacture, exported filled with American products, or exported empty and returned filled with foreign products, including shooks when returned as barrels or boxes; * * * but proof of the identity of such articles shall be made, under general regulations to be prescribed by the Secretary of the Treasury; and if any such articles are subject to internal tax at the time of exportation such tax shall be proved to have been paid before exportation and not refunded: *Provided*, That this paragraph shall not apply to any article upon which an allowance of drawback has been made, the reimportation of which is hereby prohibited except upon payment of duties equal to the drawbacks allowed. * * *

It is conceded that the importers, and appellees, acted in good faith and were without fraud in the premises and that their claim of free entry for the merchandise in question was based on a strict compliance with the following regulations made by the Secretary of the Treasury in obedience to said Par. 493, which requires that "proof of the identity of

such articles shall be made under general regulations to be prescribed by the Secretary of the Treasury: "

ART. 331. Articles of the growth, produce, and manufacture of the United States, exported to a foreign country and returned without having been advanced in value or improved in condition by any process of manufacture or other means, and upon which no drawback or bounty has been allowed, are entitled to entry free of duty, but this privilege does not extend to articles exported in bond from a manufacturing warehouse and afterward returned to this country. The exportation must be *bona fide* and not for the purpose of evading any revenue law.

* * * * * * *

If returned to the port of original exportation, the fact of regular clearance for a foreign destination must be shown by the records of the customs, * * * and by the declaration of the person making the entry. But when the reimportation is made into a port other than that of original exportation, there shall be required, in addition to the declaration, a certificate from the collector and the naval officer, if any, of the port where the exportation was made showing the fact of exportation from that port.

* * * * * * *

ART. 332. To guard against fraud, and to insure identity, the collector shall require, in addition to proof of clearance, the production of a statement, certified by the proper officer of the customs at the foreign port from which the reimportation was made, and authenticated by the consul of the United States, that such merchandise was imported from the United States in the condition in which it is returned, and that it has not been advanced in value or improved in condition by any process of manufacture or other means.

* * * * * * *

ART. 335. Casks, barrels, carboys, bags, and vessels of American manufacture, exported filled with American products, or exported empty and returned filled with foreign products, including shooks when returned as barrels or boxes, are free of duties, but in case drawback has been allowed upon the exportation of any such articles, they shall on importation be subject to a duty equal to the drawback. Proof of the identity of such articles must be made, and if any of them were subject to internal tax at the time of exportation, such tax shall be proved to have been paid before exportation and not refunded, or duty will accrue.

* * * * * * *

ART. 336. Before entry the following proof shall be required by the collector:

First. A certificate as follows from the shipper, in triplicate, attested by a consul or other proper officer authorized to take affidavits, as follows:

(Cat. No. 773.)

I hereby certify, under oath, that, to the best of my knowledge and belief, the* —— hereinafter specified, are truly of the manufacture of the United States, †—— or were exported from the United States, filled with —— and that it is intended to reship the same to the port of ——, in the United States ‡ —— on board the ——, now lying in the port of ——. I further certify that, to the best of my knowledge and belief, the actual market value of the articles herein named, at this time and in the form in which the same are to be exported to the United States, is as follows §——.

—— ——.

Sworn to before me, this — day of ——, 18—.

—— ——.

Second. A declaration in the entry by the importer of the name of the exporting vessel, the date of the ship's manifest, and the marks and numbers on the articles for which free entry is sought. If the exportation was made by railroad, the waybill may be substituted as evidence for the manifest. The marks and numbers should be such as to prove beyond any reasonable doubt the identity of the articles with those entered on the outward manifest.

* * *

Third. An affidavit by the importer, attached to the entry, that the articles mentioned therein are to the best of his knowledge and belief truly and *bona fide* manufactures of the United States, or were bags exported therefrom filled with grain.

* * * * * * *

Fifth. Verification, after examination, by the appraiser with an endorsement stating whether the articles are of domestic or foreign manufacture.

Such bags and other coverings exported to be returned should, when practicable, be marked or numbered, in order that they may be identified on their return; and the marks or numbers should appear on the shipper's manifest upon which they are exported.

* * * * * * *

(Customs Regulations, 1892.)

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*Name the articles. †If the packages are empty insert statement of the facts, as "and were exported from the United States filled with the produce of that country." ‡If the packages contain foreign merchandise insert "filled with" and a declaration of the merchandise they contain. §This blank is to be filled only when the merchandise contained in the packages is subject to a duty ad valorem.

* * * * * * * *

Afterwards, however, upon a pretended examination at the appraisers' stores of the "samples" sent there by the collector, it was reported to the latter that the packages of each invoice contained some bags of foreign manufacture, which were dutiable; whereupon the collector made an impost entry, covering the *whole* consignment, and assessed duty thereon at the rate of 2 cents per pound. The appellees paid the duty, thus assessed, protesting as to each exaction on the following grounds:

(1.) That the merchandise was entitled to free entry under paragraph 493 of the free list of the act of October 1, 1890, as bags of American manufacture exported filled with American products.

(2.) That, failing the first ground, the merchandise was entitled to be entered free under section 7 of the act of February 8, 1875, providing that bags other than of American manufacture in which grain shall have been actually exported from the United States may be returned empty to the United States free of duty, the claim being that section 7 of the act of 1875 is unrepealed, and that the Treasury regulations with reference to the said provision are still in force.

(3.) That the goods were not fairly and faithfully examined by the appraisers, and that the assessment of two (2) cents per pound on the entire contents of the packages on the ground that they were found, in the opinion of the appraiser, to contain a mixture of foreign with American bags was incorrect, and the goods being all of one value, whether of foreign or American make, do not come under the pro-

visions of section 2910 of the Revised Statutes. (R., pp. 20–25.)

The importers then appealed to the Board of General Appraisers, where the collector's decision in each case was affirmed, but on a state of facts that made the action of the Board little better than a travesty on justice.

From the decision of the Board the importers appealed to the Circuit Court of the United States for the eastern district of Louisiana, where, after proper investigation, it was decreed that "the examination heretofore made of said bales of bags is *void and not in conformity to law or the regulations of the Treasury Department, and any liquidation of duties based on said examination is illegal and void, and the liquidation of duties heretofore made be set aside,* and the money received from Ranlett & Stone as duties be refunded as aforesaid, and the Court doth further order and decree that the Collector direct a re-examination to reliquidate the duties which may be lawfully due thereon." (R., pp. 53, 54.)

From this decree the United States appealed to the Circuit Court of Appeals, where the cause came on to be heard and was argued; but the Court, desiring further instruction before entering a decree, certified three questions to this Court, which are given further on.

In the course of the proceedings in the Circuit Court several motions were disposed of which require a passing notice.

The attorney for the government submitted a motion to the Court to rescind its order directing the Board of Appraisers to send up the record and facts in the matter of Ranlett & Stone and to dismiss their petition for a review by the Circuit Court of the action of the Board of Appraisers,

because the same did not contain a concise statement of the "errors of law and facts" complained of; but the motion was denied (R., pp. 16, 17); whereupon counsel for the government took an exception. (R., pp. 17, 18.)

The Court, on motion of Ranlett & Stone, suppressed certain testimony taken in other cases, which had been sent up by the Board of Appraisers, and also suppressed certain passages in the opinion of the Board which related "to other cases than that of Ranlett & Stone," by the following orders:

> The Court allows the motion of counsel for Ranlett & Stone *to suppress the evidence taken in other cases*, that is to say, the testimony of Henry Charnock and also the testimony of Charles W. Keeting on pages 5, 6, and 7 of Exhibit 2 filed in Court as part of the return of the Board of Appraisers.
>
> The Court also allows the motion to suppress statements in the decision of the Board of Appraisers *referring to matters in other cases than that of Ranlett & Stone*, to wit: the following clause:
>
> "From one invoice of 30 bales four were ordered for examination and the twenty-six others were subsequently demanded and not delivered by the importer."
>
> Also the following clause:
>
> "It was admitted that there were some bags of foreign manufacture and American manufacture all indiscriminately mixed together, no attempt being made on entry or afterwards to separate from these enormous totals of goods of the same class those claimed to be relieved from duty accompanied by the proof establishing such indulgence."
>
> Also all that part of the decision commencing with the words "In a carefully prepared paper in the nature of a brief by one the protestants herein," etc., down to and including the following words: "and only a small proportion of the centals thus used are of American manufacture," and it is ordered that all said testimony referred to in the said motion be suppressed as well as the statements aforesaid in said decision. (R., p. 55.)
>
> (*Italics our own.*)

This action of the Court was the subject of another exception by the attorney for the government. (R., p. 54.)

ARGUMENT.

We do not propose to discuss the first and second assignments of error (R., p. 57), which, respectively, impeach the validity of the decree because the court did not dismiss the importers' petition and did suppress matters in evidence which did not belong to the case but to other cases to which the importers were not parties, in any sense.

The third, fourth and fifth assignments relate to the questions on the merits raised by the decree appealed from.

These questions much concern a branch of commerce which has been vexed and disturbed by vacillation in the administration of the tariff, and especially by a determination to go rough shod over the law, where to follow it would be irksome.

The decree under review was a boon to justice, both as a rebuke and as a corrective.

It reminded the whole hierarchy of customs officials, from the Board of General Appraisers down, that while it is true that they are invested by law with a discretion which the courts will not invade, it is equally true that this discretion must be exercised within certain limitations ascertained by law, and that any excess of those limitations may be corrected by the courts, as may also any *abuse* of that discretion.

The case at bar presents a clear abuse of the authority and discretion vested in the appraisers and the collector, who seem to have acted as though the principle that the citizen cannot be taxed on doubtful premises had been expunged from our jurisprudence.

The case is not embarrassed by an intimation that either the importers or their vendors meditated, in any of the cases, an irregularity even, much less a purpose to defraud the revenue. Indeed the testimony of the appellant, Ranlett, shows an entire absence of motive for any such course. Being asked if the American bag does not bring a higher price because it is entitled to free entry here, he answered:

> I should think it would if the people on the other side could distinguish them, and separate them, and guarantee their free entry, but I don't think that is ever done, or can be done abroad. I don't think they know the difference. *But there is no difference, as far as we know, in the price of bags abroad, between American made and foreign made.* I will state that we are prepared to show that the prices at which we bought these bags abroad, and the prices at which we made our sales here *do not justify any room for the payment of a fraction of duty. I say this to show that they were not bought abroad as foreign bags with the intention of bringing them through as American.* (R., p. 40.)

The packages of the several importations being invoiced and entered to contain bags of American manufacture, and the importers being ignorant of anything to the contrary, as is conceded, it was arbitrary in the customs officials to take the ground that the presence of foreign-made bags *in some only* of the packages of each importation detained by them for examination, rendered the *whole importation dutiable as one of foreign-made bags, exclusively.* And it was an aggravation of this proceeding, that it was entered upon without using the proper means to ascertain whether the bags *suspected* to be foreign-made were in fact such or not.

The appellees, having furnished the evidence required to entitle their merchandise to free entry, had the right to stand on that evidence until dislodged from the position by preponderating evidence on the part of the government.

But the evidence to impeach the invoices and entries, so far from being preponderating, *was not even sufficient to raise a rational doubt.*

Although the whole record is now before the court, including all the evidence in the case, still the uncolored statement by the Circuit Court of Appeals of the facts, as they were found to have been laid before the Board of General Appraisers, and as they were sent here in connection with the questions certified, must remain a considerable factor in the present discussion. The statement is as follows:

> Upon the appeal [to the Board of General Appraisers] evidence was taken showing the facts so far recited, and in addition as follows: That of the entry, ex SS "Engineer," of 600 bales 70 *were ordered to the appraiser's store, and* 18 *of that number were opened* by the appraiser; ex SS "Legislator," 650 bales, 43 *were ordered to the appraiser's store, and of that number* 19 *were opened by the appraiser;* ex SS "Vesta" of 325 bales, 38 *were ordered to the appraiser's store,* 13 *of which were opened by the appraiser;* ex SS "Assaye" of 850 bales, 85 *were ordered to the appraiser's store,* 16 *of which were opened by the appraiser;* ex SS "Traveller" of 300 bales, 21 *were ordered to the appraiser's store,* 14 *of which were opened by the appraiser;* ex SS "Pallas" of 100 bales, 100 *were ordered to the appraiser's store, of which* 10 *were opened by the appraiser;* and ex SS "Engineer" of 100 bales, 100 *were ordered to the appraiser's store, of which* 10 *were opened by the appraiser;* that neither the appraiser nor examiner who assisted in the examination of the bales opened at the appraiser's store *had any experience or knowledge of the matter in hand sufficient to be able to say with certainty of any one bag that it was of foreign or of American manufacture. The other witnesses called appeared to be no better informed. An examination of the whole evidence shows that neither by the material, cotton selvedge, the thread used, nor stitch—and these were all the marks referred to—could any one certainly tell a foreign-made bag from an American-made bag.* In the judgment of the examiner and two or three of the witnesses, *based upon what knowledge and experience they had,* all the bales examined contained both bags of foreign manufacture and bags of American manufacture. In the opinion of the examiner it was sufficient to find any foreign bags in any bale in order to make the whole bale liable for duty—a bale being in the opinion of the examiner a unit.

For a like reason, the questions certified to this Court, containing, as they do, certain facts deduced by the Circuit Court of Appeals from the evidence, may, very properly, be referred to in this discussion. They are as follows:

> 1st. Whether the returns of the appraiser that the several importations of Ranlett & Stone contained bags of foreign manufacture *based on an examination not in conformity with law or the regulations of the Treasury Department had the effect of overthrowing the prima facie case made by the importers who were without fraud in the premises, and who had furnished all the proofs required by the customs regulations, to show that their importations were of bags free of duty?*
>
> 2d. Whether the presence of *some bags of foreign manufacture* in a bale imported as composed of American-made bags free of duty subjects to duty all the bags in the bale by virtue of the unit rule established by section 2910 of the Revised Statutes or by the general rules of law applicable to the case?
>
> 3d. Whether the presence of foreign-made bags in a bale imported as composed of American-made bags, the foreign-made bags being indiscriminately mixed in the bale with the American-made bags *without the knowledge of the importer and with no intention on his part or on the part of the vendor and shipper to conceal the dutiable bags by mingling them with others free of duty, subjects the whole bale to duty, because the importer who has complied with all the regulations prescribed by the Secretary of the Treasury as to the character of his importation fails to separate and designate the American-made bags, which he claims to be free of duty*, and although the importer requests the customs officers to make such separation and to endorse on the invoices returned by them the percentage of American-made and foreign-made bags in each bale, *which request is refused by the officers on the ground that they could not and would not make such separation because it necessitated the going through the bales bag by bag to ascertain the percentage?* (*Italics our own.*)

Congress, by Par. 493, left it to the head of the Treasury Department, after availing himself of the recorded experience of that department in customs matters, to guard the revenue by devising some mode of proof to establish the identity of bags, &c., for which free entry is claimed with bags of American origin alleged to have been previously exported filled with American products.

One would suppose that preconstituted evidence of that order would command respect and be regarded as controlling, in the absence of clear, satisfactory evidence to the contrary. It was, indeed, higher than evidence, in the ordinary sense, of the matters to which it related, it was made *proof* of them by command of the law, so that standing unshaken customs officials, attentive to law, had no alternative to giving it full effect.

The statutory proof of identity has been furnished. The examination relied on to overcome that proof was not made in conformity with law or the regulations of the department; it was made by an examiner who had no experience and no knowledge as to the manufacture of bags, and, in consequence thereof, is unable to say with certainty that any one of the bags was of foreign or of American manufacture (p. 3). Nor could any witness examined so state, nor could that fact be determined by any of the marks referred to by the witnesses—that is to say, by the material, the cotton selvedge, the thread used, or the stitch.

This is not a question of the weight of evidence (for we consider the regulations of the department equivalent to a statute that certain proof of identity shall be furnished). Is not the importer entitled to the benefit of that proof, unless a case of fraud or mistake is made out against him? In the Dominici case, 78 Fed. Rep., 338, it was held that when "a mode of proof is prescribed by the terms of the law or by its fair interpretation no other than the statutory evidence can be admitted." The Court cites Dutihl *vs.* Maxwell, 2 Blatchf., 541, in support of the proposition: "When a statute limits a thing to be done in a particular mode, it includes a negative of any other mode." (R. R. *vs.* Reid, 13 Wall., 270.)

The importer has established by the statutory proof, that the bags are entitled to free entry as American-made bags. The affirmative imposed on the importers has been sustained in the manner prescribed by law. Suppose this case had been tried by a jury, and the importers, having introduced the statutory proof of identity of the bags imported with those exported, had rested, and then the government had introduced evidence such as that here described, the result of an illegal and an imperfect examination, made by incompetent officers, without knowledge or experience, who admitted they could not with certainty say of any bag, that it was of foreign or domestic manufacture; would it not have been the duty of the presiding judge to instruct the jury to find a verdict for the importers? If so, then it was the plain duty of the board of appraisers to act as though there was no evidence before them impeaching the importers' *statutory proof.*

It is now well settled that the question for the judge in such case is not whether there is literally no evidence, but whether there is any that might reasonably satisfy the jury that the fact sought to be found is established.

Ryder *vs.* Wombell, L. R. 4 Exch., 38.

> Before the evidence is left to the jury there is, or may be, in every case a preliminary question for the judge, not whether there is literally no evidence, but whether there is any upon which a jury can properly proceed to find a verdict for the party producing it, upon whom the burden of proof is imposed.
>
> Commissioners *vs.* Clark, 94 U. S., 284.
>
> Improvement Company *vs.* Munson, 14 Wall., 448.
>
> Dwight *vs.* Pearman Co., 103 N. Y., 359.

What is the evidence upon which the Government relies to overcome the case made by the importers?

That of Appraiser Alba, who frankly states that he has had no experience "in handling bags or the manufacturing of bags" (p. 38), and that of United States Examiner Keeting, who says that he only examined grain bags imported here since October, 1893 (p. 29). It is true that he subsequently says, though he was never engaged in the bag business, he had given it some study for two or three years, and close study for the last four months, since it had been thrown on his hands to examine them (p. 32).

The reason why no study was given to bags is, that everybody believed that grain bags were free of duty, whether manufactured at home or abroad; it was supposed that the tariff act of 1883 and of 1890 had not repealed sec. 7 of the tariff act of February 8, 1875, which provided that "bags other than of American manufacture, in which grain shall have been actually exported from the United States, may be returned empty to the United States free of duty under regulations to be prescribed by the Secretary of the Treasury."

18 Statutes, p. 307, ch. 36.

This was the opinion of the Treasury Department as expressed in a letter to the Collector of Customs at New York, on June 11, 1891.

See Synopsis of Decisions, 1891, vol. 1, p. 669.

The testimony shows how difficult it is to discriminate between foreign-made bags and those of American manufacture.

The government called as a witness, Mr. Naef, secretary of the Elevator Company, who had been handling bags since 1881, especially bags lent to the ships, and filled with grain, and, as a rule, shipped back again (p. 36).

He was asked "what would be the difference in appearance of an American bag made of foreign jute, and sewed by machinery, and a foreign-made bag of the same material and sewed by machinery?" He answered, "If it was sewed by the same kind of machinery, I guess they are about alike." "Then you cannot distinguish?" "No, sir" (p. 36).

Being shown a bag, his opinion was asked. He replied: "I consider it foreign-made, but, at the same time, I will not swear to it" (p. 36). In fact the bag was made in California. (See p. 37.)

"Why did he so consider it? on account of the sewing. Is it hand-sewed or machine-sewed? It is machine-sewed, with double thread; we do not do that here in general" (p. 36).

Being asked to look through all the bags there present as samples, he said that he could not swear they were of American make nor whether they were foreign made (p. 37).

Being asked his judgment as an expert, he said: "I should think that some of them are of foreign make and some of them of California make" (p. 37).

There were twenty-three sacks sewed by hand which he thought foreign made and all the rest "the same make as those we receive from California" (p. 37).

But being asked whether all the bags shown him except twenty-three were American made, he answered, "No; I could not state that. It is simply my idea, but I could not swear whether it is American or foreign made" (p. 37).

Mr. Ranlett states in his examination that he is not an expert, that his experience is limited and that he rarely sees a bag, as he hardly ever thinks of opening a bale, nor is he familiar with all kinds of American bags. Being asked to examine the samples present and pick out as an expert the

bags of American origin, he said, "I will commence by saying I am not an expert. The only way I can tell a bag to be distinctly American is when it is sewed upon a machine with white cotton thread, and I find none of that particular kind in this lot" (p. 40).

The government also examined as a witness Mr. Glover, who was a bag manufacturer (p. 35). He had been a manufacturer of bags for four years and had handled bags for twenty years, both foreign and domestic. He was asked:

Q. What are the distinguishing marks between foreign and domestic bags?

A. I could not tell.

Q. What are the distinguishing features of a bag in its finished condition?

A. I could not tell that.

Q. Could you tell whether by looking at the bag it was made abroad or in this country?

A. No, sir.

Q. I suppose there are some kinds of bags that bear very distinguishing features, are they not?

A. There are some sewed with tarred twine that I would think were of foreign make, but I could not swear to it.

Q. Please look at that bag (handing witness a bag) and tell me whether you could say if it is of foreign or American manufacture?

A. I could not tell, sir—I could not swear to it by any of them.

Q. You could not swear that any of them are of American manufacture—either American or foreign?

A. I could not swear to it.

Q. You handle a good deal of burlaps at times?

A. Yes, sir.

Q. Don't burlaps come to this country having cotton threads in the selvedge?

A. Yes, sir.

(Mr. Alba handed witness a bag and asked him:)

Q. Will you please tell me whether this is an American or foreign-made bag?

A. I could not tell. It has the appearance of an American-made bag, but I could not swear to that.

Q. Will you please examine that bag and see if you find any cotton selvedge in it?

A. I don't see any appearance of cotton selvedge in this bag.
Q. Tell me what this bag is?
A. That has the appearance of an American-made bag.
Q. Has that cotton selvedge in it?
A. Yes, sir.
Q. By what do you distinguish the manufacture of it?
A. By the sewing of it in the mouth. We sew them that way here.
Q. Do you mark your bags with privilege of drawback?
A. No, sir; I do not (pp. 35, 36).

This testimony is particularly important, as none of the sample bags presented to the witnesses were, in the opinion of the government officers, American made; for Mr. Keeting, the examiner, told us that at the time that he examined the bales of bags and drew samples "he took out no samples of those of American manufacture" (p. 30), though American bags were in the bales. He was then asked:

Q. Would you call it a representative sample of the bags contained in this bale?
A. Well, according to my understanding of my duties as an examiner, I should say yes.
Q. But I understood you to say that it was a bag of only one of the kinds that was in the bale?
A. Yes, but I did not understand it to be my duty as an examiner that I should have anything to do with the few American bags I came across. I took the samples to show that foreign manufactures were found (p. 30).

Although in this place he says he found a large per cent. of foreign-made bags; in the course of his examination, when Mr. Wilkinson, one of the general appraisers sent here from New York to take testimony, said to him: "I notice your notations on this invoice are as follows: After a careful examination of this importation, we are of opinion that foreign-made bags are contained therein." He answered:

A. My reason was that I considered that if there were twelve foreign-made bags in the whole lot they should pay the full duty

on foreign-made bags. That is my understanding, that the bale is a unit (p. 34).

Q. In your examination of these various lots did you take any one bale and examine every bag in that bale?

A. I did not count them out in these lots. I only ran through them.

Q. You did not examine every bag?

A. No.

Q. Have you any data by which you can give the exact percentage of American and foreign-made bags?

A. No. I cannot give specific details, but in general I found from 70 to 80 per cent.

Q. And you retained no samples of the American bags?

A. No, sir (p. 34).

The main foundation for the opinion of Examiner Keeting that these bags were foreign-made bags is the fact, as he says, "that the foreign-made bag always has cotton selvedge in the bag" (p. 32).

On cross-examination, however, he admitted that the American bag at times has cotton selvedge (p. 33).

He also says that American-made bags of foreign material have the selvedge, and for that reason they had sent to California.

Mr. Keeting also thought he could distinguish foreign from home-made bags by the stitch, but he admitted that the machine stitch would be as regular in one as in the other (p. 32).

He said, however:

> I have never seen an American machine-made bag exactly like a foreign-made bag. The difference between the two, he says, is that the foreign-made bag has a coarser stitch (p. 33).

Being asked how he knew that fact—did he positively know that the bags with the coarser stitch were foreign-made—he said, "In my opinion it is difficult to give an explanation" (p. 33).

He stated that he was not acquainted with the manufacture of foreign bags, otherwise than in the examining-room, and that he was never in the bag business (pp. 32, 33).

Failing in his "cotton selvedge" distinguishing mark and in his "difference of thread mark," he falls back on "general appearance" and the "cloth" of which the bag is made; he says, "In the foreign-made bag the cloth seems to be different" (p. 33).

He was then asked, "Can you tell the difference between the foreign and the American manufacture by the cloth?" He answered, "Not always—I say the general appearance" (p. 47).

Being asked if American bags are not frequently made of foreign cloth he said, "Yes, and that is the reason we sent to California. I noticed that nearly all the bags I found with the selvedge showed that they were made of foreign material" (p. 32).

The question here is *not whether the bags were made of foreign material, but whether the material, foreign or domestic, was made up or manufactured into bags in this country.*

Who can rise from the perusal of this evidence without perceiving that the testimony of the two government officers was colored by the situation in which they were placed by the protests of Ranlett & Stone, who claimed that the goods had not been fairly and faithfully examined by the appraisers?

These two appraisers, Keeting and Alba, were thus put on trial for their official conduct, and it is evident they were struggling for their official lives.

Keeting endeavors to justify his irregular and illegal attempts at an examination of the goods by saying;

> I considered if there were *twelve* foreign-made bags in the whole lot, they, the importers, should pay the full duty on foreign-made bags. That is my understanding, that the bale is a unit (p. 34).

Alba makes the same defense. He says:

> My reply was the same made by Mr. Keeting, that we were of the opinion that when bags of foreign origin were found among them that it carried the whole bale (p. 38).

Now let us turn to the examination of the bags made by the appraisers. There were to be examined 2,925,000 bags, contained in 2,925 bales of 1,000 bags each. According to the testimony of Mr. Keeting, only 74 bales out of these 2,925 were opened and examined. Mr. Ranlett thinks 100 bales were opened, judging from the appearance of the bales when received by him. *The number that should have been opened and examined is* 292.

Mr. Ranlett says:

> At the time of withdrawing them from the custom-house, we kept a record of every bale that had been examined. We did not know at any time how many were being examined, but when we found they were not examining all, from that on we believe they examined a larger quantity, and at one time afterward we sent a written communication asking to have a larger quantity examined *subsequent to the case now under consideration* (p. 41).

The subsequent importations referred to by Mr. Ranlett, and all of which Mr. Keeting says he opened and examined, were not then before the board.

Mr. Keeting gives the number of bales opened by him.

He says in one invoice of 300 bales, thirty were sent to the public stores, but only six were opened. Another invoice of 100 bales, ten were sent to the public store—he says, possibly I opened a bale and not kept a sample (p. 30).

Another invoice of 300 bales, twenty were sent to store.

He took samples from five. Invoice of 200 bales, twenty-eight were sent to store; he took samples from five.

Invoice of 125 bales opened 4.

Invoice of 600 bales opened 18.

Invoice of 880 bales opened 16.

Invoice of 300 bales opened 9.

Invoice of 100 bales opened 10.

He did not reserve a sample from every bale he opened; nor did he take a sample from every bale he opened; he opened more bales than were represented by the samples produced by him; nor did he open every bale sent to the public store (p. 32).

In the case of the last importation of 100 bales, where ten bales were opened, this increased number of bales examined was the result of the complaint of insufficient examination which had been made by Raulett and Stone in December, 1893. The last 100-bale entry is dated, January 5, 1894, and was liquidated January 19, 1894 (p. 12).

The Revised Statutes, section 2901, and the Treasury Regulations, Article 828, provide that—

> The collector shall designate in the invoice and the permit for examination by the appraisers at least one package of every invoice, and one package at least of every ten packages and a greater number should it be deemed necessary by himself or the naval officer or the appraiser * * * and order the designated package to be sent to the public store for examination and appraisement.

Art. 820 provides:

> That it is the duty of the appraiser to make careful examination of any merchandise which the collector designates for that purpose, etc.

Art. 832 provides:

> If it be found on examination that the merchandise in the package varies in quantity or in character from the specifications

> in the invoice, or that the merchandise is invoiced below its foreign market value, the appraiser will notify the collector in writing of the fact, and if necessary request that the remaining packages contained in the invoice be submitted for examination in detail. If the remaining packages have been delivered to the importer under bond, the collector will require him to deliver them to the storekeeper of the appraiser's store under form No. 634.

The court will remember that the duty on bags is two cents per pound, and therefore the market value is of no concern, and therefore the examination in this case was necessarily confined to the character of the goods specified in the invoice.

We have already called attention to the fact that both Keeting and Alba considered every bale of bags a unit, and if one foreign bag was found in a bale that subjected the whole bale, in their opinion, to the payment of duty.

For this reason their examination into the whole contents of a bale was considered unnecessary, and even the proportion of foreign bags in a bale was, in their opinion, a matter of no moment. Hence their minds were not directed to that subject as one of any value. It was for this reason that Alba in his notification to the collector, as required by regulation No. 832, says the bales are dutiable at 2 cents per pound "as containing bags of foreign manufacture" (pp. 26 and 27).

This same appraiser reports to the collector in the case of the importation of 300 bales by the "Traveller," that the regulations for the examination had been complied with, when in point of fact only 21 bales out of 300 had been ordered to the public stores, and only 14 of these were opened (p. 26).

The court can now appreciate the character of the examination made of the 2,925 bales of bags, and the capacity of

the appraisers to discriminate between bags of foreign and bags of domestic manufacture. When men so experienced as Naef and Glover could not tell the difference between foreign and domestic-made bags, what value can be attached to the opinion of Alba, who admits that he has had no experience in handling bags or in manufacturing them (p. 38), or to the opinion of Keeting, who had only examined bags since October, 1893 (p. 29).

Glover, on the contrary, had been handling bags for twenty years, and had been manufacturing them for four years (p. 35), and Naef, as secretary of the Elevator, had been handling bags since 1881, or 12 years (p. 36).

These facts, when considered in connection with the disregard of the law as to the number of packages required to be opened and examined, certainly so impair the effect of the appraiser's examination that the court will not allow it force sufficient to overcome the statutory proof of identity which the importers produced at the time they made entries of their importations.

This was the view taken by the judge who tried the case in the court below. He considered the examination of the appraisers void and not in conformity to the law.

In Greely *vs.* Thompson, 10 Howard, 239, the Supreme Court said: "Besides this, it would be unreasonable to overturn the invoices and oaths of the importers unless by personal inspection and examination."

The court further says that "the law requires the quality of the goods to be fixed by inspection or examination and not alone by evidence or opinion of others."

Again the court says:

> All we hold is that such [officers] as are detailed in a particular case should do their duty in the manner which their oaths require; and it would be a novelty for courts to countenance one or more persons, if undertaking a duty in such a case, to be exonerated from it because it was burdensome or difficult. (*Id.*)

In the case of Iron Company *vs.* Redfield, 23 Fed. Rep., 651, the court said:

> But the statute required that one package in every ten packages of the merchandise to be appraised must be designated by the Collector and must be examined, etc. If such examination is not held the re-appraisal is invalid and the excess of duty or the penalty that is imposed by reason of increased valuation above those stated in the invoice is illegally imposed.

In Converse *vs.* Burgess, 18 How., 415, the protest alleged that the goods "were not fairly and faithfully examined by the appraisers." The Circuit Court ruled *that the method of examination might be inquired into by evidence;* evidence was admissible to ascertain whether the examination made by merchant appraisers was in effect equivalent to an examination of one package in ten of the importation, and that if it was not, the appraisement was void.

The court said:

> These acts of Congress provide for the appointment, regulate the duties and impose the limitations on the authority of the appraisers and determine the conditions on which the validity of their assessment depends.
>
> All their powers are derived from these acts, and it is their duty to observe the restrictions and obey the directions they contain. In the present instance there was a neglect of the positive mandate to open one package of every invoice and one package at least of every ten packages of the goods, wares and merchandise, and the jury have found that the inquiry they made was not in effect an equivalent for such an examination. We are, therefore, of opinion that the importer was not precluded by their return from disputing the sufficiency or accuracy of their statement.

This case is cited with approval in Oelbermann *vs.* Merritt, 123 U. S., 366:

> If such non-observance of the positive mandate of the statute in regard to the examination of so many of the original packages as the statute specified as a condition on which the validity of the assessment depended, vitiated the appraisement, the non-observance of the statute, in regard to the qualifications of the merchant appraiser must be regarded as equally one of the conditions on which the validity of the assessment depends, etc.

It is true, there is a presumption in favor of the decision of the officers, where there is a question of market *value* of the merchandise, as was held in Arthur *vs.* Unkart, 96 U. S., 118, but the court will notice that there is a great difference between an examination made to ascertain whether goods are dutiable or not, and an examination made to ascertain the value of dutiable goods.

The conclusiveness of the valuation of imported merchandise is shown in Hilton *vs.* Merritt, 110 U. S., 98; Aufmordt *vs.* Hedden, 137 U. S., 310; Passavant *vs.* U. S., 148 U. S., 214; Origet *vs.* Hedden, 155 U. S., 228. The court in Arthur *vs.* Unkart, 96 U. S., draws the distinction between a case where no duty is due and a case where excessive duty is demanded. It says:

> It was only when they were held for more duty than the law justified, that it became duress and illegal, and to entitle himself to recover for the illegality the plaintiff must show such excessive charge. If the collector had no authority in the premises, and could hold the goods for no amount whatever, a different question would arise. But here the very issue was as to the amount, and the burden of proof, therefore, of illegal amount rested on the plaintiff.

In Muster *vs.* Magone, 155 U. S., 247, a case in which valuation was the question, the court said:

> But in the language of Mr. Justice Blatchford in Aufmordt *vs.* Hedden, p. 328: "This case does not present any question like that of substituting a new merchant appraiser for one already selected, as in Greely *vs.* Thompson, 10 How., 225; nor is it a case where the appraiser did not see the original packages, as in Greely's Administrator *vs.* Burgess, 18 How., 413; nor a case where it was offered to show that the merchant appraiser was not a person having the qualification prescribed by the statute, as in Alberman *vs.* Merritt, 123 U. S., 356; and in Mustin *vs.* Cadwalader, 123 U. S., 369; nor a case where it was contended that the appraiser did not open, examine and appraise the packages designated by the collector, as in Alberman *vs.* Merritt; nor a case where to the admitted market value of an importation, there was added such additional value as was equal to a reduction made in the valuation of the cases containing the goods, as in Badger *vs.* Cusimano, 130 U. S., 39. Those were instances of errors *outside of the valuation itself and outside of the appraisement prescribed by the statutes.*"
>
> * * * The presumption is that a sworn officer, acting in discharge of his duty upon a subject over which jurisdiction is given him, has acted rightly, and there is nothing in this record which, in the slightest degree, tends to indicate that the general appraiser did not endeavor by all reasonable ways and means to arrive at the true and actual market value.

Where valuation is concerned, the remedy of the dissatisfied importer is to call for a reappraisement. (Origet *vs.* Hedden, 155 U. S., 239; section 13, Act 10 June, 1890, chap. 407.)

But all the acts of Congress have subjected to judicial investigation revenue cases which involve the classification of the goods imported and the rate of duty thereon. This is a very different question from that of the *value* of the goods imported.

It may be true that in any case the presumption is that the officers charged with the duty of examination acted rightly. This was the view of the court in the case of U. S.

vs. Rosenwald (67 Fed. R., 328), but in that case the requisite number of packages was designated for examination and an actual examination was made.

That was a tobacco case, where the duty depended on the size, the fineness and the number of leaves to the pound. The court said:

> Where the classification of merchandise depends upon the existence of specified characteristics descriptive of its qualities, it is to be presumed in favor of a correct classification that those characteristics were found by the officers of the customs.

The classification here, unlike that of tobacco, does not depend on characteristics descriptive of the quality of the bags.

It is true that the Supreme Court in the Shroeder case expressed the opinion, that a neglect of the provisions of the statute which prescribes an examination of one bale in ten was not fatal to the assessment of the higher tax, as it operated to no greater disadvantage to the importer than to subject him to the necessity of bringing an action. But the unlawful demand of the duty did not conclude his rights. The court did not consider that the protection of the convenience only of the tax-payer authorized it to treat the statute as mandatory and to consider official acts not in strict conformity with it void. Nor did the court discharge the appraisers from their duty to examine one package in ten, by holding the duty not mandatory.

But the court below did not decree the examination of the appraisers void, merely because of the failure to open and examine the statutory number of bales, though that was one of the facts properly considered by it in coming to the conclusion that the pretended examination was a mere mockery.

The court considered that not only was the statute disregarded, but that the examination was inadequate, that the officers who made it had no experience and were incapable of discriminating between home-made and foreign-made bags, even if it were possible to do so, and therefore it accepted as the basis of its judgment the statutory proof that the bags imported by Raulett & Stone were the identical bags exported from California filled with wheat.

This case differs from all others reported in the books; in no other case does the statute designate the proof which the importer must produce to establish the classification of the goods imported.

That statute was enacted because of the inherent difficulty of the subject, and the presumption is that importations certified and documented in the manner prescribed by the statute, are entitled to exemption from duty, unless the presumption be overthrown by countervailing evidence.

In the case of Robertson *vs.* Frank Brothers Co. (132 U. S., 17, 24), the Court reaffirm the principle, in this language:

> If the appraiser proceed upon a wrong principle, contrary to law, and this be made to appear, his appraisement is not unimpeachable.

It was also held in Oelbermann *vs.* Merritt (*supra*), that the importer could show, for the purpose of invalidating an appraisement, that a merchant appraiser who took part in the appraisement had no acquaintance with the merchandise appraised, the law requiring him to be "discreet and experienced." The Court say:

> If the merchant appraiser does not possess these qualifications, he has no power conferred on him by the statute to act as a merchant appraiser.

It is true, these cases relate to abuses of power and discretion by appraisers in the valuation of merchandise, but it is not perceived that the principles they lay down are inapplicable to abuses of power by appraisers in the classification of merchandise. In both cases, a failure to observe the directions and limitations of the law renders null whatever is done.

Under the old law the merchant appraiser was *both judge and witness*, but under the new law, the customs administrative act of June 10, 1890, appraisement by merchant appraisers is abolished and all appraisements and classifications are made by *officers* appointed for that purpose. The experience which these official appraisers must frequently lack with reference to merchandise submitted to them, whether for appraisement or for classification, must be supplied by the testimony of persons who have the requisite experience. It was therefore their duty in this case to resort to such testimony, failing which the original entry should have been allowed to stand upon the official *proof* on which it was made.

The opinion of the Board of Appraisers seems to attach more importance to protecting the tide-waiters of the custom-house from the irksome duty of separating "from the enormous totals of goods of the same class those claimed to be relieved from duty" than to the sacred principle that protects the citizen from taxation except upon the plainest grounds.

What the board means by saying that the appellees *had failed to establish affirmatively the facts entitling their merchandise to free entry is more than we can comprehend.* Apparently the Board attached little, if any, importance to the *statutory*

proof on which the original entry was made. It does not seem to have occurred to the Board that, before duty could be lawfully assessed, it was necessary that the government should overcome and nullify that proof by evidence leaving not a reasonable doubt that the proof was untrue.

THE UNIT RULE.

The decision of the Board that the presence of bags of foreign origin in the packages examined authorized the Collector to assess duty as well on the whole of all the invoices to which such packages belonged as on the packages themselves bears date on May 21, 1894, but, strange to relate, contains no reference to a previous decision of the Board or to the following Treasury circular based thereon, dated April 27, 1894, completely repudiating the so-called unit rule:

(14912.)

ASCERTAINMENT OF ORIGIN OF RETURNED EMPTY BAGS.

TREASURY DEPARTMENT, *April* 27, 1894.

SIR: Referring to your letter of the 16th of February last, relative to the difficulty of ascertaining the origin of returned empty bags claimed to be exempt from duty under the provisions of paragraph 493 of the Act of October 1, 1890, I enclose herewith a copy of a report received from the Collector of Customs at New York, under date of the 28th ultimo, in which he expresses the opinion that there is "no way out of the difficulty, under the law, *except by an examination of the legal number of packages, and such an examination of the contents of said packages as will reveal the character of the bags contained therein*, and the finding of the appraiser to be the basis for the assessment of duty on the bales not examined."

In the absence of any provision of law to prevent the importation of both free and dutiable second-hand bags baled together, and *in view of the recent decision of the Board of General Appraisers*, referred to by you and by the Collector of New York, in the case of certain sec-

ond-hand bags on which duty was paid under protest, the department, as at present advised, concurs with that officer in the above-cited opinion, and you are hereby authorized to follow at your port the course adopted at New York in regard to similar importations.

Respectfully yours, CHARLES S. HAMLIN,
Assistant Secretary.

(5152 *g.*)
Collector of Customs, New Orleans, La.

What is more, this circular continued to be the rule of administration *until the month of April, 1898*, when a new rule, requiring importers to pack separately bags of foreign and domestic origin, was introduced by the following Treasury circular:

(18425.)

RETURNED EMPTY FOREIGN AND DOMESTIC BAGS MUST BE PACKED SEPARATELY ON AND AFTER APRIL 1, 1898.

TREASURY DEPARTMENT, *October* 2, 1897.

SIR: In reply to your letter of the 21st ul imo, concerning the examination of returned empty bags, you are informed that in the future importers of such bags will be required to have the bags of foreign and domestic origin packed separately in order that their character may be readily determined upon examination at the appraiser's stores.

With the view, however, of allowing importers sufficient time to comply with this requirement, the regulations of April 27, 1894 (Synopsis 14912), which require "an examination of the legal number of packages, and such an examination of the contents of said packages as will reveal the character of the bags contained therein; and the finding of the appraiser to be the basis for the assessment of duty on the bales not examined," now in force, will be continued for a period of six months from the 1st instant.

Respectfully yours, W. B. HOWELL,
Assistant Secretary.

(7366 *h.*)
Collector of Customs, New York, N. Y.

In order to fasten the tax on each of the invoices, as a total, and, at the same time, save themselves the exertion of going through the samples sent to the appraisers' store, let alone the importations, package by package, the customs officials fell back on what they termed "*the unit rule*," meaning the rule prescribed by section 2910, Revised Statutes, namely:

> When merchandise of the same material or description, but of different values, is invoiced at an average price, and not otherwise provided for, the duty shall be assessed upon the whole invoice at the rate to which the highest valued goods in such invoice are subject.

The idea of bringing the importations in this case within that provision was strained and far-fetched, and, plainly, a mere shift. In the first place, the section has exclusive reference to *ad valorem* duties, whereas the duty assessed here was a specific duty of two cents per pound. In the second place, the section relates to cases where "merchandise of the same material or description *but of different values, is invoiced at an average price*, and *not otherwise provided for*." In this case there are no different values of the same material invoiced at an average price in any one of the several invoices. In the third place, the merchandise in these consignments *is* otherwise provided for in the tariff. In a word, the case is a clear one of wrenching a statute from its obvious sense in order to justify an illegal exaction.

It is remarkable that this forced and oppressive "*unit rule*" should have been applied by the customs officials, when Congress had furnished a provision which was exactly adapted to the case, but to which they have been willfully

blind. In section 2901, Revised Statutes, is to be found the following:

> If any package be found by the appraisers to contain any article not specified in the invoice, and they or a majority of them shall be of opinion that such article was omitted in the invoice with fraudulent intent on the part of the shipper, owner, or agent, the contents of the entire package in which the article may be, shall be liable to seizure and forfeiture on conviction thereof, before any court of competent jurisdiction; *but if the appraisers shall be of opinion that no such fraudulent intent existed, then the value of such article shall be added to the entry, and the duties thereon paid accordingly, and the same shall be delivered to the importer, agent, or consignee.*

There being no pretense of fraud in the invoices or entries, the presence of foreign-made bags in the packages examined, if proved, was *as lawful as though such bags had been invoiced and entered.* It was, therefore, plainly oppressive to treat the importers as *delinquent*, by applying to them the arbitrary "*unit rule.*" Section 2901 gives no countenance to any such proceeding. Indeed, the section refers to unspecified articles "*found by the appraisers*" in "*any package,*" but it will hardly be contended that the appraisers "found" bags of foreign manufacture in the packages which were not even opened by them.

To presume, from the *accidental* presence of bags of foreign manufacture in some of the packages, that they were present in all the packages, is entirely at war with the indulgence extended by section 2901 to the importer who acts in good faith.

That section, in prescribing how many packages shall be sent to the appraisers for examination, contains the significant provision that these officers may call for a "*greater number,*" and article 832 of the Treasury Regulations pro-

vides, that where "merchandise in the package varies in quantity or in character from the specifications in the invoice or that the merchandise is invoiced below its foreign market value" the appraiser may, "if necessary, request that the *remaining packages contained in the invoice be submitted for examination in detail.*"

Now, if in such cases of *gross delinquency* the so-called "*unit rule*" is not applicable, *a fortiori*, it is not applicable to a case like the present, where it is conceded there was no fraud or negligence on the part of either the vendor and shipper or the importers, and where the customs officers were requested by the importers to separate and designate the American-made bags and refused to do so.

What, now, do these provisions mean, if not, that the importer cannot be taxed except upon *established facts*, arrived at by a faithful examination of *all* the packages covered by the importation, if such detailed examination be necessary? It is monstrous to say, that the innocent importer can be taxed on mere presumption, in a case like the present, where, it is conceded by the Treasury, there is no law forbidding the importation of domestic and foreign made bags in the same package.

The position taken by the appraisers that "*it was the duty of the importer to separate and designate such merchandise and accompany the same with the evidence required by law*" (R., p. 3) was unreasonable, to the last degree. How could he be expected to "separate and designate" the so-called foreign-made bags, when their presence in the packages was *unknown* to him? How could he be expected to be ready with evidence to prove what he did not know or suppose to exist? When the so-called discovery of the presence of bags of

foreign manufacture was made, all the packages were *in custodiâ legis*, and none but an official examination of them was permissible. Nor do we understand that the results of an examination of the packages by the importers, after delivery to them, could have been accepted as a basis for the liquidation of the several entries. On the contrary, Treasury Regulation 829 expressly forbids *any examination* at the residence of the importer, or "at any other unusual place," except where "the articles are of a very fragile character or are imported for the personal use of the importer and not as merchandise, or when they might be exposed to injury by being opened, examined, and repacked at the appraiser's store," and then only by "*special permission*" from the collector with the approval of the appraiser, such permission to be given by "the collector in person, or, in his absence, by his special deputy." * * *

It is clear, therefore, that the appraisers' requirement of *separation and designation* by the importers was, in the nature of things, an *impossibility*, and that the importers' request, that the customs officers would make such separation, and endorse on the invoices returned by them the percentage of American-made and foreign-made bags in each bale, was both reasonable and proper.

The question of classification of an imported article is one of law, and under the control of the courts, and it being a concession in the case that the packages of the several consignments contained only a percentage of bags of foreign make, it was clearly error to classify the whole of each consignment as "bags for grain made of burlaps" dutiable under paragraph 355, of the Tariff of 1890.

This Court has repeatedly held, as above shown, that it is

the duty of appraisers to examine all the packages sent to them by the collector, under section 2901, Revised Statutes. (Converse *vs.* Burgess, 18 How., 413; Oelbermann *vs.* Merritt, 123 U. S., 356; Robertson *vs.* Frank Brothers Co., 132 U. S., 17, 24,) and it is unnecessary to combat by argument the converse of that position advanced in the opposite brief, further than to say, that Erhardt *vs.* Schroeder (155 U. S., 124) does not conflict with the cases cited, in holding that the duty in question is not mandatory.

Of a piece with the contention just noticed, is the position that, in the face of the gross abuse of discretion practiced by the appraisers, the results of their so-called examinations as to the country of origin of the several importations of bags may be eked out and validated by the presumption that official acts are duly performed. Need we do more than say, in reply, that an officer, justifying a seizure of a citizen's property to satisfy a tax, must show affirmatively and beyond doubt that every step required by law to validate the proceeding has been taken? The same principle applies to a suit by government to recover a tax.

To build an argument solely on the assumed general fitness and qualifications of the appraisers, as we understand the learned counsel for the government to do, is as much as to say that, in a case where their experience and knowledge were plainly not adequate, it was possible for them to make a valid classification of merchandise without first calling to their assistance persons who had adequate knowledge and experience.

It being, at the time of the importations in question, *the conceded right of the citizen to import American and foreign made bags designedly or accidentally in the same bales with-*

out separation, how is it possible for the customs officers to deprive him of the right to free entry of the American-made bags *upon a mere arbitrary assumption?*

In the case at bar the importer believed that the contents of the bales of each importation were bags of American origin, and he adduced the prescribed legal proof that they were such.

There being nothing to impeach the verity of that proof, but, on the contrary, much to sustain it, was he not entitled to stand on that proof and insist that the merchandise should be entered free?

Unmindful of the principle that neither court nor counsel should presume to be wiser than the law, the Attorney General sought, in his brief on the former argument, to belittle the statutory proof filed by the appellees; but it is apparent, from a decision of the General Appraisers to be found in that brief (p. 41), that such evidence *is* entitled to weight. They say:

> We know that *grain bags* are emptied of their contents on the docks in a foreign country, *and they may, therefore, be assembled and identified;* but in the case of *flour bags*, which are the subject of this inquiry, we know that they follow their contents into the interior, *and are widely dispersed*, and it would seem contrary to reason to believe that they are again gathered together to any considerable extent. In this case we are asked to give credence to the theory that 19,315 flour bags exported by one vessel, 12,524 by another, and 18,100 by a third were reassembled so as to re-enter the United States in lots composed of their original associates.

We repeat, that the citizen is not to be taxed on doubtful premises. If the law under which a tax is levied does not furnish clear authority for the imposition, the levy is without warrant. "*Duties are never imposed on the citizen upon vague or doubtful interpretations*" (Hartranft *vs.* Wiegmann,

121 U. S., 609, 616). So we maintain, that when the evidence to countervail the importer's statutory proof as to the origin of bags imported as American is *vague or doubtful,"* as it unquestionably is here, to say the very least of it, how can a basis for exacting the tax on foreign-made bags be said to exist? So far from it, the action of the customs officials was a flagrant violation of the principle laid down in the case just cited.

It is impossible to read the statement in the certificate of the proceedings before the appraisers in this case, without feeling that they bring reproach on the administration of the customs laws, and that the courts should exercise close vigilance in every case where the citizen complains of abuse of power by those concerned in the enforcement of all revenue laws.

The argument advanced to bring this case under section 2910 is, we think, far-fetched. That section, as we have shown above, has no application to the conditions existing here. It is unnecessary to repeat our discussion to establish that position, further than to say, that it is impossible to stretch and strain a harsh tax law, so as to make it reach cases not within its language, by any process of reasoning known to the law. That the learned counsel for the Government has not succeeded in the attempt, shows that the end sought is an impossibility under existing principles.

The unit rule of section 2910 applies only to aggregations in one package, *designedly* made, but in the case at bar the presence of foreign-made bags, if any, was accidental.

This is no such case as an importation of a mixture of anthracite and bituminous coal, where separation is practically *impossible*, and where there might be some reason for

holding that the importer had *designedly* produced a condition of things which has given a dutiable character to the whole mass as bituminous coal, and deprived the other component of the right to free entry. In that way, alone, can the government tax be saved.

But to visit a similar penal consequence upon a whole importation of bags invoiced as of American origin, because of the *confessedly accidental presence* in *some* of the packages of bags of foreign manufacture is abhorrent to justice; and hence section 2901, Revised Statutes, was framed to meet just such a case, and temper the severity of the law.

THE GOVERNMENT'S BRIEF.

We deny that there is any valid evidence of the presence of a single foreign-made bag in any of the importations here involved. As expert evidence, the testimony to show the presence of such bags is unworthy of consideration, and, in an ordinary case, would be taken from the jury. Consequently, the often recurring reference in the opposite brief to the presence of a greater or less percentage of bags of foreign origin is *wholly gratuitous*, and a begging of the very question to be resolved. Furthermore, we do not admit, and have never admitted, that any such bags were found in the importations now under consideration. *This we say once for all.*

On the contrary, we strenuously insist that the statutory *proof* on which each importation was entered *free stands unshaken and unaffected by anything in the case.*

We deny that the customs officials are entitled to the presumption that their acts in the premises were regular and valid, because those acts are void *on their face.*

It is stated, over and over again, and, apparently, aimlessly, that the importers did not ask for a re-examination. Conceding they did not, were their rights any the less on the appeal to the Board of Appraisers, where there was a hearing *de novo?* As the Board say in their opinion, (p. 43,) "the door was open for the entrance of all expert witnesses that could be produced."

With section 2901 (R. S.) before them, counsel say that "no portion of a bale of bags entitled to free entry may properly, *under any right construction of the law,* consist of bags of foreign manufacture," and, consequently, that a more extensive examination would have led to no practical result.

These very conditions may properly occur *designedly* by importing foreign and American made bags packed together in the same bales or *accidentally.* (See Treasury Circular of April 27, 1894, and sec. 2901, R. S.) This disposes of the attempt to reduce our argument to an absurdity.

The derogatory references in the opposite brief to the PROOF required by the statute, and to the appellees' claims under that proof, are surprising, coming from the government too. But this Court never claims to be wiser than the laws it is called upon to administer. Need more be said?

It is asserted that the bags drawn from the bales "*presented to the appraiser indubitable proof of the presence of foreign-made bags in an importation claimed to consist solely of American-made bags.*" Contrast this language with that

of the unbiassed statement of the Circuit Court sent up with the questions certified, namely:—

> *An examination of the whole evidence shows that neither by the material, cotton selvedge, the thread used, nor stitch—and these were all the marks referred to—could any one certainly tell a foreign-made bag from an American-made bag.*

But the following quotation seems to show that the justice of the case had begun to dawn on counsel opposite:

> The separation of foreign and American bags, which are so similar in appearance that they *can only be told apart after a very careful individual inspection, if at all*, would be even more irksome than a separation of anthracite from bituminous coal, both of which are recognizable at sight.

Harsh arguments that do not meet the justice of a case sometimes recoil on themselves.

The unsupported attempt to implicate the respectable gentlemen whom we represent in fraud or circumvention of some kind is unfortunate and to be deprecated. It can do the government's case no good here.

We know this Court will give no attention to some things introduced into this case, in argument, that only serve to raise prejudice. The government should not desire success against the citizen except upon fair terms. Before this Court the government and the citizen stand on the same plane. "There is not one law for the former and another for the latter" (McKnight *vs.* United States, 98 U. S., 186; United States *vs.* Bostwick, 94 U. S., 66).

The effort to bring this case under section 2910 (R. S.) needs no further attention than it has already received in this brief. We know of no rule of interpretation on which it can be justified.

The idea that section 2910 (R. S.) is penal, and that an average invoice valuation is an evil to be corrected, and the argument built on that idea are novelties.

The proceedings in the Circuit Court were avowedly taken under section 15 of the Customs Administration Act of June 10, 1890, c. 407 (26 Stat., 131). They are in no sense a suit against the U. S. Board of General Appraisers, but are a suit against the United States, those officers having no interest whatever in the subject in controversy.

This Court will for the purposes of justice look beyond the parties defendant, as it has frequently done before in similar cases. (*In re* Ayers, 123 U. S., 443, 487, &c., and cases there cited.)

We respectfully submit that the decree should be affirmed.

THOS. J. SEMMES,
WM. A. MAURY,
Of Counsel for Appellees.

WASHINGTON, D. C., 1505 *Penn. Ave.*

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No. 20.

Reply Brief of Semmes & Maury
for Appellees.

Supreme Court of the United States.

OCTOBER TERM, 1898.

Filed Oct. 14, 1898.

No. 20.

THE UNITED STATES, APPELLANT,

vs.

RANLETT & STONE.

On Writ of Certiorari to the United States Circuit Court of Appeals for the Fifth Circuit.

BRIEF IN REPLY TO APPELLANT'S SUPPLEMENTAL BRIEF.

THOS. J. SEMMES,
WM. A. MAURY,
For Appellees.

JUDD & DETWEILER, PRINTERS, WASHINGTON, D. C. 10-13-'98

IN THE

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BRIEF IN REPLY TO APPELLANT'S SUPPLEMENTAL BRIEF.

It is important to recall that, when the case was here on certificate, the counsel for the government represented that without all the facts, "*the full record*," the justice of the case could not be reached. In their brief filed last term (p. 10) they say:

> *It is to be regretted that the full record of the case as it exists in the Circuit Court of Appeals is not before the court in order that from the facts therein set out the questions certified might be more readily understood.* Abstract questions are propounded which are not altogether justified by the concrete case. The government submits to the court

> the question whether, in view of all the facts and of the transmittal with the certificate by the circuit court of appeals of a copy of the transcript of the record below, a proper determination of the case does not require the entire record to be before the court. (*Italic our own.*)

The "full record" is now here, but, strangely enough, the counsel for the government make no particular use of it. Their elaborate brief contains *no discussion of the testimony whatever.* This must be taken, therefore, as a tacit admission of the damaging finding of the Circuit Court of Appeals in their certificate:

> That neither the appraiser nor examiner who assisted in the examination of the bales opened at the appraiser's store *had any experience or knowledge of the matter in hand sufficient to be able to say with certainty of any one bag that it was of foreign or of American manufacture. The other witnesses called appeared to be no better informed. An examination of the whole evidence shows that neither by the material, cotton selvedge, the thread used, nor stitch—and these were all the marks referred to—could any one certainly tell a foreign-made bag from an American-made bag.* (*Italic our own.*)

We are entitled to regard it as established, that not a witness was produced before the General Appraisers to show that the bags were of foreign origin who had any definite knowledge on the subject. This worthless testimony as to opinion is relied on to rebut the presumption raised by the documentary proof on which the merchandise in question was entered free. To allow the presumption to be thus overthrown, would be to degrade the proof which the statute intended should have weight and value.

This court, it is presumed, will not countenance the claim that the importers failed to supply *all* the evidence required by the Treasury regulations to entitle them to free entry of their importations, because that evidence is not spread on the record.

In the nature of things, all the evidence required by the Treasury regulations was furnished or it would have been impossible for the collector to admit the importations to free entry.

The case having proceeded on the *concession* that all the conditions necessary to free entry had been complied with, it is inadmissible for the government to raise the point at this stage of the case. The government having been silent when in conscience it ought to have spoken, it shall be debarred from speaking when conscience requires it to be silent.

If the proof necessary to free entry had not been furnished in compliance with the law, the Circuit Court could not have entered the decree directing a refund of the duties that had been paid by appellees.

Furthermore, the Circuit Court of Appeals, in the first question certified, state that the importers "*had furnished all the proofs required by the customs regulations, to show that their importations were of bags free of duty.*"

See Appellees' Bf., p. 11.

Again, the General Appraisers, in their opinion, (Rec., pp. 41–43) do not intimate that there was any deficiency in the proof necessary to free entry.

The record contains satisfactory evidence that the necessary proof was furnished. In the letter addressed by the appellees to Geo. C. Tichenor, President Board U. S. General Appraisers, it is stated:

> We claim that these bags were of American manufacture, shipped from this country, filled with the products thereof, *as shown by papers attached to entries*, and consequently entitled to free entry on their return, *and we have complied with the law and Treasury regulations as to the production of the sworn statements of the English shippers as to the origin of the goods and certificates of the Pacific coast Customs*

> *Authorities as to their exportation therefrom filled with wheat*, which prima facie evidence of their being of the manufacture of this country has not been disproved. (Rec., p. 14.)
> (*Italic our own.*)

In the same letter there occurs this paragraph:

> We submit in evidence all the entries and the invoices, certificates and papers attached thereto, or in the possession of the Customs Authorities in reference to our claim. (Rec., p. 15.)

In a letter from Special Deputy Collector Calhoun Fluker to Mr. Tichenor, President of the Board of General Appraisers, dated January 18, 1894 (Rec., pp. 21, 22), occurs the following, with reference to the case of the appellees:

> In connection with the importations the protestants have produced the foreign consular certificates required by the regulations. (Rec., p. 22.)

It is perfectly clear, then, that everything necessary to be done, in the way of furnishing evidence, or otherwise, was done by the importers, and that the marks or numbers on the bags imported corresponded with those stated in the "*certificates of the Pacific coast Customs Authorities*," and identified the importations as grain bags of American origin that had been exported from California filled with wheat, and with the intention of being returned to this country.

Indeed when the bags in question were exported with the intention of being returned to the United States as bags of American origin entitled to free entry and were so entered at the port of export by the collector, his act in doing so involved a decision on his part that the bags were of American origin. In that way it became a thing adjudged at the time of exportation that the bags were of American origin. Thus nothing remained to be done at the port of importation but

to verify the claim to free entry by comparing the marks &c., on the export manifest with those on the import manifest.

As to the alleged thoroughness of the examinations of the bales we first hear of that from Deputy Collector Fluker in his letter of January 18, 1894 (Rec., p. 24), and from Alba and Keeting about the same time. These officials had been stirred up by the protests of Ranlett & Stone. Keeting, in verifying Alba's claim to thoroughness in his examinations of the importations in question, united with him one Prudhomme, an appraiser (Rec., p. 24), whom Alba and Keeting seem to have taken good care not to put on the stand.

As an evidence of this new-born diligence, we find that of the importations of 100 bales of bags by the "Pallas" and the "Engineer" each, in January, 1894, the whole lot of 10 bales from each importation sent to the appraisers' store was opened. This is significant and has an interesting *retrospective bearing!*

With reference to the matter suppressed by the Circuit Court, as having no relation to the case at bar, it would seem to be a plain proposition, that what the court did was correct. Presumptively, proceedings under protests filed by other importers, and statements and admissions in the briefs of counsel representing them have no place in this record, unless the government can show some better ground for their contention than the mere fact that the matter suppressed was returned by the Board of Appraisers in pretended obedience to the order of the Circuit Court (Rec., p. 3) directing the Board to return the record and the evidence taken before them *as to the matter involved in this application, entitled In re Ranlett & Stone vs. U. S. Board of General Appraisers, &c.* Clearly, what was done in Charnock's case or

said by counsel not representing the appellees has no place in a return under that order. But we suppose that the other side would contend that the burden of proof is on the appellees *to show that they are not bound by proceedings between other parties!*

Much reference is made to the fact that appellees did not demand a re-examination of the packages, as if their not having done so had placed them at some disadvantage. But counsel point to no law on the subject. It must be that they, inadvertently, confound reappraisement and re-examination.

If the time when the depositions in this case were taken should be deemed important, the court will find the date, March 27, 1894, given on page 52 of the record.

Respectfully submitted.

THOS. J. SEMMES,
WM. A. MAURY,
For Appellees.

WASHINGTON, D. C., *1505 Penna. Ave.*

UNITED STATES *v.* RANLETT AND STONE.

CERTIORARI TO THE CIRCUIT COURT OF APPEALS FOR THE FIFTH CIRCUIT.

No. 20. Submitted October 11, 1898. — Decided December 5, 1898.

Section 7 of the act of February 8, 1875, c. 36, 18 Stat. 307, 308, was repealed by the tariff acts of 1883 and of 1890.

When a later statute is a complete revision of the subject to which the earlier statute related, and the new legislation was manifestly intended as a substitute for the former legislation, the prior act must be held to have been repealed.

When bags are imported, part of which are returned bags of American manufacture and part foreign, if the appraiser, after examination, decides that the goods are not as described, his judgment must stand unless reversed.

Section 2901, Rev. Stat., was intended for the benefit of the Government, and is not mandatory.

Where merchandise, liable in large part to duty, is entered as exempt therefrom, the collector has the right to assume that the mingling was intentional and with design to evade the revenue laws; and it devolves upon the importer to show what part of the whole he contends should not be taxed.

In the light of the rulings of the Treasury Department, and the special cir-

Statement of the Case.

cumstances of the case, the court is not disposed to hold that if the proportion of dutiable bags sufficiently appeared or might reasonably have been ascertained, the Circuit Court could not have adjudged a recovery of that proportion, or directed a reliquidation.

In view of the testimony, and considering that the statute was not strictly pursued in the examination (though the court perceives no reason to doubt the faithfulness of the officials in the discharge of their duties), and the difficulties in the way of determining the make of the bags disclosed by the evidence, and bearing in mind that the taxation of so many of the bags as were of American manufacture operated as a penalty in spite of the concession that no fraud on the revenue was intended, the court thinks it unnecessary to remand the cause for another hearing, and that the ends of justice will be best subserved by directing a decree for the refunding of one fourth of the duties paid.

RANLETT and Stone imported at the port of New Orleans, from Liverpool, England, 2925 bales of grain bags, known as cental bags, each bale containing one thousand bags, or 2,925,000 in all, by several vessels, the entries running from August 14, 1893, to January 15, 1894.

The bags were entered free of duty under paragraph 493 of the act of October 1, 1890, c. 1244, 26 Stat. 603, as bags of American manufacture returned to the United States.

That paragraph is as follows:

"Articles the growth, produce and manufacture of the United States, when returned after having been exported, without having been advanced in value or improved in condition by any process of manufacture or other means; casks, barrels, carboys, bags and other vessels of American manufacture exported filled with American products, or exported empty and returned filled with foreign products, including shooks when returned as barrels or boxes; . . . but proof of the identity of such articles shall be made, under general regulations to be prescribed by the Secretary of the Treasury; and if any such articles are subject to internal tax at the time of exportation such tax shall be proved to have been paid before exportation and not refunded: *Provided*, That this paragraph shall not apply to any article upon which an allowance of drawback has been made, the reimportation of which is hereby prohibited except upon payment of duties equal to the drawbacks allowed. . . ."

Statement of the Case.

The general regulations prescribed by the Secretary of the Treasury under this paragraph contained the following provisions:

"ART. 331. Articles of the growth, produce and manufacture of the United States, exported to a foreign country and returned without having been advanced in value or improved in condition, by any process of manufacture or other means, and upon which no drawback or bounty has been allowed, are entitled to entry free of duty, but this privilege does not extend to articles exported in bond from a manufacturing warehouse and afterward returned to this country. The exportation must be *bona fide* and not for the purpose of evading any revenue law.

* * * * *

"If returned to the port of original exportation, the fact of regular clearance for a foreign destination must be shown by the records of the customs, . . . and by the declaration of the person making the entry. But when the reimportation is made into a port other than that of original exportation, there shall be required, in addition to the declaration, a certificate from the collector and the naval officer if any, of the port, where the exportation was made showing the fact of exportation from that port.

* * * * *

"ART. 332. To guard against fraud, and to insure identity, the collector shall require, in addition to proof of clearance, the production of a statement, certified by the proper officer of the customs at the foreign port from which the reimportation was made, and authenticated by the consul of the United States, that such merchandise was imported from the United States in the condition in which it is returned, and that it has not been advanced in value or improved in condition by any process of manufacture or other means."

* * * * *

"ART. 335. Casks, barrels, carboys, bags and vessels of American manufacture, exported filled with American products, or exported empty and returned filled with foreign products, including shooks when returned as barrels or boxes,

are free of duties, but in case drawback has been allowed upon the exportation of any such articles, they shall on importation be subject to a duty equal to the drawback. Proof of the identity of such articles must be made, and if any of them were subject to internal tax at the time of exportation, such tax shall be proved to have been paid before exportation and not refunded, or duty will accrue.

* * * * *

"ART. 336. Before entry, the following proof shall be required by the collector:

"*First.* A certificate as follows from the shipper in triplicate, attested by a consul or other proper officer authorized to take affidavits, as follows:

"I hereby certify, under oath, that, to the best of my knowledge and belief, the [1] ——— hereinafter specified, are truly of the manufacture of the United States,[2] ——— or were exported from the United States, filled with [1] ———, and that it is intended to reship the same to the port of ———, in the United States,[3] ——— on board the ——— now lying in the port of ———. I further certify that, to the best of my knowledge and belief, the actual market value of the articles herein named, at this time and in the form in which the same are to be exported to the United States, is as follows [4] ———.

———— ————.

"Sworn to before me, this — day of ———, 18—.

———— ————.

* * * * *

"*Second.* A declaration in the entry by the importer of the name of the exporting vessel, the date of the ship's manifest, and the marks and numbers on the articles for which free

---

[1] "Name the articles.

[2] "If the packages are empty, insert statement of the facts, as 'and were exported from the United States filled with the produce of that country.'

[3] "If the packages contain foreign merchandise, insert 'filled with' and a description of the merchandise they contain.

[4] "This blank is to be filled only when the merchandise contained in the packages is subject to a duty ad valorem."

entry is sought. If the exportation was made by railroad, the way bill may be substituted as evidence for the manifest. The marks and numbers should be such as to prove beyond any reasonable doubt the identity of the articles with those entered on the outward manifest. . . .

"*Third.* An affidavit by the importer, attached to the entry, that the articles mentioned therein are to the best of his knowledge and belief truly and *bona fide* manufactures of the United States, or were bags exported therefrom filled with grain."

* * * * *

"*Fifth.* Verification, after examination, by the appraiser, with an indorsement stating whether the articles are of domestic or of foreign manufacture.

"Such bags and other coverings exported to be returned should, when practicable, be marked or numbered, in order that they may be identified on their return; and the marks or numbers should appear on the shipper's manifest upon which they are exported."

When the respective shipments arrived in this country free entry was made by the importer and evidence furnished regarding the right to free entry and the character of the goods. Samples of the respective invoices were then sent to the appraiser's office and examined as follows:

From one entry of 600 bales, 70 were ordered to the appraiser's store and 18 of that number were opened by him;

Of another entry of 650 bales, 43 were ordered to the store and 19 were opened;

Of a third entry of 325 bales, 38 were ordered to the store and 13 were opened;

Of a fourth entry of 850 bales, 85 were ordered to the store and 16 were opened;

Of a fifth entry of 300 bales, 21 were ordered to the store and 14 were opened;

Of a sixth entry of 100 bales, 100 were ordered to the store and 10 were opened;

And of a seventh entry of 100 bales, 100 were ordered to the store and 10 were opened.

Statement of the Case.

The examination of the bales was made by the appraiser, assisted by an examiner. The appraiser reported as to each importation that the bales contained bags of foreign manufacture, subject to duty, and thereupon the collector, by direction of the Treasury Department, at the request of the importers in order to obtain possession of the goods, made impost entries, assessing duties at the rate of two cents per pound on the entire consignment, under paragraph 365 of the act of 1890, 26 Stat. 593, as "bags for grain made of burlaps." The importers protested against the "decision, liquidation and rate and amount of duties assessed," on the grounds: That the bags were entitled to free entry under paragraph 493 of the free list as bags of American manufacture, exported filled with American products; that, if not free under that paragraph, they were entitled to free entry under the provisions of section 7 of the act of February 8, 1875, and the regulations for the free entry of bags other than of American manufacture, prescribed by the Secretary of the Treasury thereunder; and that the goods were not fairly and faithfully examined by the appraisers; that the assessment of two cents per pound because the bales contained a mixture of foreign and American bags was incorrect, and that the goods being all of one value, whether of foreign or American make, did not come under the provisions of section 2910 of the Revised Statutes.

The Board of General Appraisers sustained the action of the collector. General Appraisers' Decisions, No. 2623.

The importers applied for a review of this decision to the Circuit Court of the United States for the Fifth Circuit, which, without taking any additional testimony, reversed the decision of the board, and entered a decree that the duties paid by Ranlett and Stone, namely, two cents per pound on the several consignments of bags, enumerating them, be refunded; "that the examination heretofore made of said bales of bags is void and not in conformity to law or the regulations of the Treasury Department, and any liquidation of duties based on said examination is illegal and void, and the liquidation of duties heretofore made be set aside, and the money

received from Ranlett and Stone as duties be refunded as aforesaid; and the court doth further order and decree that the collector direct a reëxamination of said bales of bags to be made according to law, and on such reëxamination to reliquidate the duties which may be lawfully due thereon."

The United States appealed from the decree to the Circuit Court of Appeals, which certified certain questions to this court, whereupon a writ of certiorari was issued and the entire record brought up.

Mr. Assistant Attorney General Hoyt and *Mr. W. J. Hughes* for appellants.

Mr. Thomas J. Semmes and *Mr. William A. Maury* for appellees.

Mr. Chief Justice Fuller, after stating the case, delivered the opinion of the court.

In respect of these importations, it must be assumed that the bags were not in fact all of American manufacture or substantially so.

The opinion of the General Appraisers stated that "it was admitted that there were bags of foreign manufacture and of American manufacture, all indiscriminately mingled together, no attempt being made on entry or afterwards to separate from these enormous totals of goods of the same class those claimed to be relieved from duty accompanied by the proof establishing such indulgence." The examiner testified that he "in some cases examined every bale of the whole entire invoice;" that he used his judgment "to try to open sufficient to get at the classification of the goods;" and that where he opened the bales and examined them he found of foreign make in general "from seventy-five to eighty per cent." Indeed we do not understand the importers to deny that these importations contained foreign made bags.

Under Title 33 of the Revised Statutes a duty was imposed on grain bags, except those manufactured in the United

States and exported containing American products, declaration having been made of intent to return the same empty. Rev. Stat. §§ 2504, 2505.

By section 7 of the act of February 8, 1875, c. 36, 18 Stat. 307, 308, it was provided: "That bags, other than of American manufacture, in which grain shall have been actually exported from the United States, may be returned empty to the United States free of duty, under regulations to be prescribed by the Secretary of the Treasury."

Section 6 of the tariff act of March 3, 1883, c. 121, 22 Stat. 488, 489, provided that on and after July 1, 1883, "the following sections shall constitute and be a substitute for Title 33 of the Revised Statutes." The provision in regard to empty returned bags of American manufacture was reënacted in substance in the free list, but that of section 7 of the act of 1875 was omitted, and bags, excepting bagging for cotton, were made dutiable.

Paragraph 493 of the tariff act of 1890 retained the same exemption from duty upon returned empty bags of American manufacture, and was silent in regard to returned empty foreign made bags which were filled when exported.

In view of this legislation, Acting Attorney General Maxwell advised the Secretary of the Treasury, July 20, 1893, that the provision of section 7 of the act of 1875 exempting foreign made grain bags was repealed. 20 Op. Atty. Gen. 630. This ruling was followed and approved by the Treasury Department, August 22, 1893, Syn. T. D. 14,281; and the same ruling was made by the Board of General Appraisers, February 3, 1894, in *Kent* v. *United States*, G. A. 2448, as it had been in prior decisions; by Judge Lacombe, in effect, April 21, 1891, in *In re Straus*, 46 Fed. Rep. 522; and specifically by Judge Townsend in *Kent* v. *United States*, 68 Fed. Rep. 536, June 2, 1895. The latter case was carried to the Circuit Court of Appeals for the Second Circuit and the decree affirmed, April 7, 1896, 38 U. S. App. 554. The rule applied was that "when a later statute is a complete revision of the subject to which the earlier statute related, and the new legislation was manifestly intended as a substi-

tute for the former legislation, the prior act must be held to have been repealed;" and the opinion of Judge Shipman leaves nothing to be added in support of the conclusion reached.

Foreign made bags, then, being dutiable at two cents per pound under paragraph 365 of the act of October 1, 1890, and these bales being permeated with bags of foreign manufacture, the appraiser reported all the bags as dutiable and the collector so assessed them.

But the importers insist that this assessment was illegal because of the insufficiency or invalidity of the examination; or of the absence of a statute specifically applicable; or because it was not confined to foreign made bags.

Paragraph 493 required proof of the identity of articles entered as exempt thereunder, and this was not only repeated in the regulations, but Article 336 required "verification, after examination, by the appraiser, with an indorsement stating whether the articles are of domestic or foreign manufacture." By section 2 of the Customs Administrative Act of June 10, 1890, c. 407, all invoices must contain a correct description of the merchandise, signed by the manufacturer or by the person owning or shipping the same, or by his duly authorized agent, which under section 5 might be adopted by the domestic consignee or owner, who by section 9 was made liable for the employment or use of any fraudulent or false invoice or statement by means whereof the United States may be deprived of lawful duties. Under section 10 it was the duty of the appraiser to ascertain, estimate and appraise the actual market value and wholesale price of merchandise imported, and the number of yards, parcels and quantities. And evidently this ascertainment involves character and quality as well as value, since the statement, invoice or entry must be true in respect of the character of the goods as well as of their value. 26 Stat. 131, 136.

On the question of identity, then (which under the law includes the question of country of manufacture), the production of the papers required by the regulations are not conclusive proof, and if the appraiser, after actual examination had,

decides that the goods are not as described, but are such, in fact, as to fall within a different classification, and so reports to the collector, his judgment must stand unless reversed on reappraisement, or by the Board of General Appraisers on protest filed.

As to these bags, the examiner reported to the appraiser his finding of a very large percentage of foreign made bags in the shipments, and the appraiser reported that he found the shipments to contain bags of foreign manufacture and that the importations were dutiable at two cents per pound under paragraph 365.

If the importers were not satisfied with the examination made, and objected to the competency of the examiner and appraiser, they should have applied for a reëxamination; but they did not do this, nor did they offer evidence before the Board of General Appraisers tending to establish an objection on that ground.

But it is said that the appraisement was invalid because the examination was not in accordance with § 2901 of the Revised Statutes. That section, however, was intended for the benefit of the Government, and we have held that it is not mandatory, and that official acts are not invalidated for want of strict compliance therewith. *Erhardt* v. *Schroeder*, 155 U. S. 124, 125; *Origet* v. *Hedden*, 155 U. S. 228.

The section reads thus:

"The collector shall designate on the invoice at least one package of every invoice, and one package at least of every ten packages of merchandise, and a greater number should he or either of the appraisers deem it necessary, imported into such port, to be opened, examined and appraised, and shall order the package so designated to the public stores for examination; and if any package be found by the appraisers to contain any article not specified in the invoice, and they or a majority of them shall be of opinion that such article was omitted in the invoice with fraudulent intent on the part of the shipper, owner or agent, the contents of the entire package in which the article may be, shall be liable to seizure and forfeiture on conviction thereof before any

court of competent jurisdiction; but if the appraisers shall be of opinion that no such fraudulent intent existed, then the value of such article shall be added to the entry, and the duties thereon paid accordingly, and the same shall be delivered to the importer, agent or consignee. Such forfeiture may, however, be remitted by the Secretary of the Treasury on the production of evidence satisfactory to him that no fraud was intended."

Assuming that fraudulent intent was lacking, these bags were not held for forfeiture, but the collector, in effect, added them all to the entries, leaving it to the importers to prefer such claim to exemption as they might consider they were entitled to.

Section 2901 was brought forward from section 32 of the act of March 2, 1861, c. 68, 12 Stat. 197, and on December 28, 1868, Mr. Secretary McCulloch made the following ruling.

At that time the law imposed a duty of twelve cents per pound on all woollen rags, and admitted free rags composed of cotton and linen and intended for the manufacture of paper, and twenty-one bales of rags brought into the country from Canada and containing at least forty per cent of woollen rags, though imported as containing rags for the manufacture of paper, had been seized. The matter being referred to the Secretary, he ruled, in a letter addressed to the Collector of Customs at Rochester, as follows: "If you are satisfied that there was no intention on the part of the importers to conceal the dutiable rags by mingling them with others free of duty, you will not hold them for condemnation, but will allow the parties to separate such as are dutiable from such as are not so, and make entry accordingly, paying the proper duty on the former class. These instructions are to be considered as applicable only to such bales as contain so large a proportion of woollen rags as to render it worth while to collect a duty. Forty per cent of woollen rags is, however, much too large a percentage to be allowed entry as free goods."

Again, in July, 1890, it was held by the Treasury Department that where cargoes of anthracite and bituminous coal were imported, so mixed as to render it impracticable to

separate the free from the dutiable coal for the purpose of the accurate weighing of each kind, the whole cargo should be treated as dutiable. T. D. 10,098, Syn. 1890.

The general policy of the law is indicated in the statutory requirements that where goods of different qualities or different values are mingled, or are composed of material of different values, the highest rate of duty shall be imposed, as in the familiar instances of the classification of articles composed of two or more materials, at the rate of duty charged on the component material of chief value; in section 2911 of the Revised Statutes, that whenever articles composed wholly, or in part, of wool or cotton, of similar kind, but different quality, are found in the same package, charged at an average price, the appraisers shall adopt the value of the best article as the average value; in section 2912, that when bales of wool of different qualities are embraced in the same invoice at the same prices whereby the average price is reduced more than ten per centum below the value of the bale of the best quality, the value of the whole shall be appraised according to the value of the bale of the best quality, and that no bale, bag or package shall be liable to a less rate of duty in consequence of being invoiced with wool of lower value; and in section 2910, that: "When merchandise of the same material or description, but of different values, is invoiced at an average price, and not otherwise provided for, the duty shall be assessed upon the whole invoice at the rate to which the highest valued goods in such invoice are subject."

Numerous provisions exist in the statutes and regulations designed to protect the Public Treasury from the bringing in of goods at a less rate of duty than they ought to pay under cover of association with goods properly subject to the lower amount; and the protection intended to be secured ought, on principle, equally to be accorded in respect of dutiable goods invoiced indiscriminately with free goods.

Of these seven importations, according to the importers, all the bales in two of them, and ten per cent of those in three of them, were ordered to the appraiser's store, while as to two of them, the number taken for examination fell a little

short of ten per cent; and of all these bales, one hundred were opened. It appeared also that all the merchandise covered by all the invoices was of the same character and description. Since the bales that were opened were found to contain foreign made bags in large numbers in importations claimed to consist solely of American made bags, it is not easily seen how the examination of a larger number of bales would have affected the result arrived at by the appraiser. And, as before observed, if the importers believed that they had sustained injury because more bales were not opened, they should have applied for a reëxamination, and they might have produced evidence before the Board of General Appraisers to maintain their claim that the bags were American made notwithstanding the return of the examiner and the report of the appraiser, or they might have protested on the ground that the duty should have been levied only on part thereof, and tendered evidence to support that contention.

If they had furnished evidence of the number of bags of domestic manufacture and the number of bags of foreign manufacture, or had sought a reëxamination with the view to an adjustment by proportion, and that had been had, then the collector might have assessed the foreign bags so ascertained and admitted the American bags free from duty. But it was for the importers and not for the Government to make the separation on which such a claim for relief would have rested, or, at least, to have invoked the rule of proportion based on a reëxamination.

The importers contended that they had complied with the law and the Treasury regulations by furnishing certain statements of the shippers as to the origin of the goods, and certain certificates as to their exportation filled with wheat, and that this *prima facie* evidence of the bags being of the manufacture of this country had not been disproved. But if it were admitted that these papers made a *prima facie* showing, that showing was overturned when it appeared that foreign made bags in large numbers made up the importations.

The remedies provided by the act of June 10, 1890, furnish the equivalent for the action against the collector which was

originally the remedy for an illegal exaction of duties, *United States* v. *Passavant*, 169 U. S. 16; *Schoenfeld* v. *Hendricks*, 152 U. S. 691; and as in that action, so in this proceeding, the importer must establish the illegality in order to recover back duties paid under protest; and this, in a case like the present, involves, in substantiating that contention, the making proof of the identity of the merchandise. *Earnshaw* v. *Cadwalader*, 145 U. S. 247, 262; *Erhardt* v. *Schroeder*, 155 U. S. 124.

Moreover, where merchandise liable in large part to duty is entered as exempt therefrom, the collector has the right to assume that the mingling was intentional and with design to evade the revenue laws; and hence even where the confusion of goods is accidental or not fraudulent in fact, and forfeiture is not incurred, it yet devolves on the importer to show what part of the whole he contends should not be taxed.

These importers, however, planted themselves on the ground that all these bags were exempt under the act of 1875; or, if not, that the assessment was wholly void for insufficient examination; or illegal except as to foreign made bags, which it devolved upon the Government to segregate from the common mass.

In the case of *Kent*, already referred to, it was decided by the Board of General Appraisers, February 3, 1894 (G. A. 2448), that the act of February 8, 1875, was not in force, and a reliquidation was ordered for a classification according to the proportion of foreign and American bags found in two bales which by agreement had been examined as representative bales, bag by bag. On the second of May, 1894 (G. A. 2610), the Board of General Appraisers held, in the matter of Balfour, Guthrie & Company, that inasmuch as bags made of burlaps were dutiable, except such as are described in paragraph 493, it was the duty of all persons, bringing in goods claimed to be free out of a class otherwise dutiable, to prove affirmatively the facts constituting the exemption, and that they should separate and designate such merchandise accompanied by the evidence required by law. This decision was reaffirmed May 5, 1894 (G. A. 2613), and again in the case before us.

On the 27th of April, 1894, which was after this case had been carried before the Board of General Appraisers and the evidence had been taken, the Treasury Department (T. D. 14,912) held that in the absence of any provision of law to prevent the importation of both free and dutiable second hand bags baled together, collectors might pursue the course of examining the designated number of packages, making such investigation of their contents as would reveal the character of the bags contained therein, and then adopt the finding of the appraisers as the basis of the assessment of duty on bales not examined. And since then it has been determined that importers of bags must have bags of foreign and bags of domestic origin packed separately. T. D. 18,425.

Notwithstanding the positions taken by the importers are, as we have seen, untenable, we are not disposed to hold, in the light of these rulings of the Department and the special circumstances of the case, that, if the proportion of dutiable bags sufficiently appeared or might reasonably have been ascertained, the Circuit Court could not have adjudged a recovery in that proportion, or directed a reliquidation.

A reëxamination *de novo* is now impracticable, but it appears to us that the evidence taken by the Board affords an adequate basis for a conclusion. The examiner testified that he found "along about 80 to 86 per cent foreign make;" "in general from seventy-five to eighty per cent;" and that, in his judgment, there was no invoice "that would show over twenty-five per cent of American bags;" yet he also said that he could not give specific details of each invoice, and that he "supposed if seventy-five per cent of the bags in the bale were of foreign manufacture, it carried the whole of them."

In view of this testimony, and considering that the statute was not strictly pursued in the examination (though we perceive no reason to doubt the faithfulness of the officials in the discharge of their duties), and the difficulties in the way of determining the make of the bags disclosed by the evidence, and bearing in mind that the taxation of so many of the bags as were of American manufacture operated as a penalty in

Statement of the Case.

spite of the concession that no fraud on the revenue was intended, we think it unnecessary to remand the cause for another hearing, and that the ends of justice will be best subserved by directing a decree for the refunding of one fourth of the duties paid.

Decree reversed, and cause remanded with a direction to enter such a decree.